


COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities

20140505-0067 FERC PDF (Unofficial) 05/05/2014



CENTER FOR
SUSTAINABLE
RURAL
COMMUNITIES

PO Box 193
Richmondville, New York 12149

April 30, 2014

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

ORIGINAL
FILED
SECRETARY OF THE
COMMISSION
JUN MAY -5 A 11: 16
FEDERAL ENERGY
REGULATORY COMMISSION

Us Army Corps of Engineers
New York District CENAN-OP-R
Upstate Regulatory Field Office
1 Buffington Street, Bldg. 10, 3rd Floor
Watervliet, New York 12189-4000

RE: Docket Nos. CP13-499 and CP13-502, NAN-2012-00449-UBR.

CO65-1

Additional submission to the FERC in support of previous comment on the appearance of impropriety and conflict of interest related to the local review and approval process for Constitution Pipeline Infrastructure in Schoharie County, New York.

The Center for Sustainable Rural Communities (CSRC) is a 501 (C)3 non-profit New York Corporation that advocates for vibrant, livable and sustainable rural communities in Upstate, New York. CSRC encourages environmentally-compatible economic development, access to arts and technology and progressive community and land-use planning while working to preserve the rural character and ecological and cultural diversity of the region.

The CSRC, an Intervener on the matter of the proposed Constitution Pipeline (Docket No. 13-499), is submitting the materials enclosed herein to further clarify comments previously submitted and to update the record as to events and actions that impact the integrity of the local review and approval process for proposed Constitution Pipeline infrastructure including contractor yards, communications towers and compressor station expansion.

1

CO65-1 See the response to comment CO36-1 regarding conflict of interest.

S-873

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

This submission contains copies of materials submitted to the Town of Richmondville, the Schoharie County Planning Commission and the New York State Office of the Attorney General Public Integrity Bureau.

Because of the concerns noted in the enclosed documents, the CSRC calls on the FERC to conduct a review to determine if the appearance of impropriety and possible conflict of interest described herein has impacted one or more of the following: the accuracy of information provided to Constitution by the Town of Richmondville, the content of Constitution's Resource Reports and/or the subsequent content of the FERC's Draft Environmental Impact Statement.

We further call on the FERC to delay any decision of the approval of Constitution's request for a Certificate of Public Convenience until such time as the integrity of the local review and approval processes can be assured`1

+ by the Town Board/Attorney of Richmondville, The Schoharie County Planning Commission/Schoharie County Attorney and the New York State Office of the Attorney General.

Respectfully submitted,

Robert Nied
Member- Board of Directors
Center for Sustainable Rural Communities

2

S-874

COMPANIES AND ORGANIZATIONS
CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

NEW YORK STATE
OFFICE OF THE ATTORNEY GENERAL
PUBLIC INTEGRITY BUREAU
120 Broadway, 22nd Floor
New York, NY 10271

COMPLAINT FORM

1. PLEASE TYPE OR PRINT CLEARLY IN DARK INK.
2. COMPLETE THE ENTIRE FORM AND SIGN.
3. RETURN SEND FORM TO THE PUBLIC INTEGRITY BUREAU.

COMPLAINANT

Your Name: Ctr. for Sustainable Rural Comm. Home Tel:
Street Address: PO Box 193 Business Tel: 800-795-1467
City/Town: Richmondville Zip: 12149 County: Schoharie

COMPLAINT

Public Agency/Individual you are complaining about: Town of Richmondville Planning Board Chair
Street Address (if known): PO Box 555
City/Town: Richmondville Zip: 12149 County: Schoharie

Has this matter been submitted to another agency? ☒ Yes ☐ No
If so, which agency: Town of Richmondville & Schoharie County Planning Commission
Is there any legal action pending? Yes ☐ No ☒
If so, where:

PLEASE BRIEFLY DESCRIBE YOUR COMPLAINT BELOW
(use back of form or attach additional documentation if necessary)

Harold J. Loder, Sr. is the Town of Richmondville (Schoharie County) Planning Board Chair with authority to deliberate and vote on approval of infrastructure associated with the proposed Constitution Pipeline. He has similar authority as a voting member of the Schoharie County Planning Commission. He also has served as the official point of contact for the Town of Richmondville with Constitution. His immediate family has received approximately \$58,000 in payments from Constitution. He has not recused himself. Examination of documents obtained under FOIL indicates that he has not disclosed the payments. The appearance of impropriety and conflict of interest has diminished the integrity of the local government process and may have impacted the regulatory process undertaken by the FERC relative to the review and potential approval of the proposed Constitution Pipeline. PLEASE SEE ATTACHED DETAILED SUBMISSION.

-Robert Nied, Member, Board of Directors, Center for Sustainable Rural Communities.

READ THE FOLLOWING BEFORE SIGNING BELOW:
I understand that any false statements made in this complaint are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.

Signature: *Robert Nied* Date: 7/30/14
Return to: NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
PUBLIC INTEGRITY BUREAU
120 Broadway, 22nd Floor
New York, NY 10271

Received by: _____ Date: _____

PLU 001 (3/04)

S-875

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd



PO Box 193
Richmondville, NY 12149

April 28, 2014

Richard T. Lape, Supervisor, Town of Richmondville
& Members of the Richmondville Town Board
PO Box 555
Richmondville, NY 12149

RE: Immediate action requested to address appearance of impropriety and conflict of interest by
Town of Richmondville official.

Dear Supervisor Lape and Members of the Town Board:

The Constitution Pipeline is proposed to run through Schoharie County, including the Town of
Richmondville. The overwhelming majority of area residents oppose the project and many face the
loss of their land through eminent domain, a degradation of their property values and the threat of
living near a pipeline built and operated by companies with poor safety records.

Because much of the regulatory and review process associated with the proposed pipeline is
conducted at the Federal level by the Federal Energy Regulatory Commission (FERC), many of those
same residents feel powerless and removed from that process. There are, however, portions of the
proposed project that fall under local jurisdiction. They include: proposed contractor yards,
communication towers, compressor stations and certain ancillary support infrastructure. Additionally,
information provided by local municipalities is used by both the pipeline company and FERC as part of
formal Resource Reports and, ultimately, to inform the draft Environmental Impact Statement (dEIS)
issued by FERC as a precursor to the issuance of a Certificate of Public Convenience and Necessity.

Area residents expect the part of the process that falls within local jurisdiction to be conducted above
board and in the best interest of the community.

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

It is impossible for our organization to know if Mr. Loder's misstatements represent simple ignorance of the local zoning regulations for which he has administrative responsibility, a deliberate effort to ignore those laws or a quid pro quo in response to payments from Constitution, nor do we allege which explanation is most likely, but the possibility that any of those explanations could be considered plausible by any reasonable observer relative to a highly experienced Planning Board Chair who should certainly know better, creates a clear appearance of impropriety and unquestionably warrants prompt action by the Town of Richmondville in order to maintain the integrity of the planning process, particularly in the case of such an enormous and controversial project.

It should be noted that following our letter alerting the Town, Mr. Loder was instructed by the Town Attorney to conduct a full site plan review of any proposed contractor yard. Had we not alerted the Town to Mr. Loder's incorrect instruction, the Planning Board would have likely have taken action resulting in an improper approval of the facility in a manner inconsistent with local law and the issuance of a Temporary Permit for which the facility is not eligible.

It should also be noted that official records (See Exhibit H) indicate that Mr. Loder transferred ownership of (4) parcels of land and two (2) structures totaling nearly 200 acres, to his sons at a price that would appear to be well below market value. The records show that the conveyance was made in October of 2012 after the proposed pipeline route was made public. The sale has the appearance of not being an "arms-length transaction" and may have been executed to facilitate current (at the time) or future negotiations between the Loder family and Constitution, involving the siting of pipeline infrastructure or access. Planning Board minutes of June 11, 2013 contain an acknowledgement by Mr. Loder that his sons had a dialog with Constitution about the specifics of pipeline infrastructure (See Exhibit I, page 4, paragraph 1).

On December 2, 2013 our organization also sent a letter to the Schoharie County Planning Commission (CPC) after obtaining a copy of a compressor station expansion plan the Town of Wright had submitted to the commission for review (See Exhibit J). Our letter pointed out the significant deficiencies relative to the NY State Environmental Quality Review Act (SEQRA) and was prompted in part by an anonymous tip to our organization reporting that several members of the County Planning Commission had been discussing fast-track approval of the plan despite its significant deficiencies. In our letter we were very careful not to accuse any particular CPC member of having conflicts of interest, an appearance of impropriety or a predisposition and bias in favor of the proposed compressor station expansion but instead requested that the CPC "poll its members before discussion and deliberation on this matter to determine if any of its members may be impacted by the proposed pipeline and thus the potential recipients of easement payments from the applicant."

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
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We therefore call on the Town Board to promptly convene an Administrative Hearing to investigate and address the conduct described to you herein as it relates to compliance with the Town of Richmondville Ethics Code, the admonishment and directives outlined in the letter of 2009 and all other applicable laws and regulations.

Because the Town Board has failed to substantively act on previous reports of possible conflicts of interest and the appearance of impropriety on the part of this same appointed public official, we further request that the Richmondville Town Board appoint independent counsel to advise the Board on the conduct of that hearing to insure the thoroughness of its process and the legitimacy of its outcome.

Respectfully Submitted,



Robert Nied
Board of Directors
Center for Sustainable Rural Communities

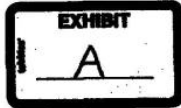
cc:
Douglas H. Zamelis, Esq.
Peter Shulman - Chair, Schoharie County Planning Commission

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd



August 14, 2013

Hon. Richard T. Lape, Supervisor
& Members of the Town Board
Town of Richmondville
P.O. Box 555
Richmondville, New York 12149

Re: Conflict of Interest of Harold Loder, Chair, Town of Richmondville Planning Board

Dear Supervisor Lape and Members of the Town Board:

This office represents the Center for Sustainable Rural Communities, Inc. ("CSRC"), a not for profit corporation approved under Section 501(c)(3) of the Internal Revenue Code, organized to encourage sustainable rural communities. As part of that mission, CSRC has been actively engaged in education and outreach with area citizens, including residents of the Town of Richmondville, in connection with the proposed Constitution pipeline project which, if approved and constructed, would significantly impact the environment, economic health, and adversely affect the quality of life for residents throughout the region. This correspondence is submitted in regard to the actual conflict of interest of Town of Richmondville Planning Board chair Harold Loder, and requests that proceedings be commenced in accordance with the Town of Richmondville Code of Ethics and the Town Law.

As you know, the Town of Richmondville Code of Ethics (the "Town Ethics Code"), adopted as Resolution No. 24 of 1991, provides at Section III(A) that "It is the policy of the Town Board of the Town of Richmondville that all officers and employees must avoid conflicts or potential conflicts of interest" which exist "whenever an officer, employee or their relative . . . has an interest, direct or indirect, which conflicts with their duty to the town or which could adversely affect an individual's judgment in the discharge of his or her responsibilities." The Town Ethics Code further provides that "No officer, employee or their relatives shall", among other prohibited activities, "Take action on a matter before the Town or instrumentality thereof when, to his or her knowledge, the performance of that action would provide a pecuniary or material benefit to himself or herself."

Section IV(1) of the Town Ethics Code further requires that "Any officer or their relative who has, will have or intends to acquire a direct or indirect interest in any matter being considered by the Town Board . . . [or] by any other . . . Board . . . and who participates in the discussion before . . . any Board . . . shall publicly disclose on the official record the nature and extent of the interest. Section IV(2) of the Town Ethics Code further provides that "Any officer or employee of the Town of Richmondville or their relative, who has any knowledge of any matter being considered by any Board . . . of the Town of Richmondville in which he or she has, or will have or intends to acquire any direct or indirect interest,

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8363 Vassar Drive • Manlius, New York 13104 •
• 315.682.0724 • dzamelis@windstream.net •

S-879

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
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shall immediately disclose, in writing, his or her interest to such Board . . . and the nature and the extent thereof, to the degree that such disclosure gives substantial notice of any potential conflict of interest."

Section VII of the Town Ethics Code provides that "In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of [the Town Ethics Code] may be fined, suspended or removed from office . . . in the manner provided by law."

Harold Loder, according to public records, is the owner of record of real property along the route of the proposed Constitution pipeline project. Upon information and belief, Harold Loder has already received or will soon be receiving an offer from the sponsor of the proposed Constitution pipeline to convey certain interests in his real property in connection with the proposed pipeline project. According to public records, Harold Loder's immediate family members are also owners of record of real property along the route of the proposed pipeline project, and upon information and belief, have likewise received or soon will be receiving offers in exchange for certain interests in their real properties in connection with the proposed pipeline project.

Additionally, the Richmondville Planning Board (the "Planning Board") will play a significant role in the review of the proposed pipeline project by providing the project sponsor with data and information concerning, among other things, the locations of wetlands, cultural and historic sites, and other pertinent information that may influence the siting of the proposed pipeline project and supporting infrastructure. The Planning Board will also have review and approval authority over certain ancillary aspects of the proposed pipeline project, including staging areas. Accordingly, the Planning Board, its chair, and each of its members must avoid prohibited conflicts of interest, any appearance of impropriety, and must act in compliance with the Town of Ethics Code, and the like provisions of the General Municipal Law.

CSRC submits that as chair of the Planning Board, Harold Loder has a clear and obvious actual conflict of interest in all matters related to the proposed Constitution pipeline project pursuant to Section III(A) of the Town Ethics Code by virtue of his and his relatives' real property and contractual interests, which conflict with his duty to the Town of Richmondville, and which could adversely affect his judgment in the discharge of his responsibilities. Because the proposed Constitution pipeline project would provide a direct pecuniary and material benefit to Harold Loder, he is prohibited from taking any action on any matter involving the proposed Constitution pipeline project by Section III(A)(5) of the Town Ethics Code.

Upon information and belief, and according to official records of the Town of Richmondville, Harold Loder has not publicly disclosed on the official record the existence of his and his relatives' interests in the proposed Constitution pipeline project, or the nature and extent thereof as required by Section IV of the Town Ethics Code. Harold Loder has failed to recuse himself from matters involving the proposed Constitution Pipeline project creating the appearance of impropriety.

Harold Loder's violations of the Town Ethics Code must be considered knowing and intentional in light of the Town Supervisor's 2009 correspondence which appropriately admonished the Planning board to "be extremely cognizant and aware of not only conflicts of interest and potential conflicts of interest, but matters which present an appearance of impropriety" and that "affected Planning Board members(s) must recuse himself/herself from not only voting, but also all discussions, actions, and deliberations involving such matters." According to your August 15, 2012 correspondence the Town Attorney was further to advise Harold Loder individually "concerning planning board issues related to Constitution pipeline and Cabot-Williams".

COMPANIES AND ORGANIZATIONS

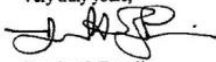
CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
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CSRC submits that Harold Loder's knowing and intentional violations of the Town Ethics Code in connection with his and his relatives' interests in the proposed Constitution pipeline project requires action in accordance with Section VII of the Town Ethics Code. CSRC requests that the Town Board promptly commence proceedings in accordance with Town Law Section 271(9). If the Town Board does not promptly commence such proceedings, CSRC reserves all its legal rights and remedies in these regards.

On behalf of CSRC, thank you in advance for your careful consideration and prompt action in this important matter.

Very truly yours,

Douglas H. Zamelis

cc:
Center for Sustainable Rural Communities, Inc.

3

188-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 PERC PDF (Unofficial) 05/05/2014



CO65-1
cont'd



Schoharie County Clerk
284 Main Street, PO Box 549
Schoharie, NY 12157

Return to:

DOYLE LAND SERVICING
CONSTITUTION PIPELINE COMPANY LLC
296 MORRIS ROAD 2ND FLOOR
SCHENECTADY NY 12303

Instrument **Deed, Right of Way**

Document Number: 655008 **Book:** 967 **Page:** 184 **Town:** Richmondville

Grantor

LODER, HAROLD J JR
LODER, JAMES E

Grantee

CONSTITUTION PIPELINE COMPANY LLC

Number of Pages: 8

Amount

\$17,500.00

Transfer Tax Receipt

Schoharie County Clerk Received

Trans Tax \$ 590

.....\$70.00

Recorded Date/Time 12/27/2013 at 10:32 AM

Receipt Number 118507

Note: ** DO NOT REMOVE - THIS PAGE IS PART OF THE DOCUMENT **

THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &
319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.

M Indica Jaycox, County Clerk

BOOK 967 PAGE 184

S-882

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Schoharie County Clerk
Document Number 655008
Recd 12/27/2013 10:32:49 AM

Record and Return to:
Doyle Land Services, Inc. in service to
Constitution Pipeline Company, LLC
296 Morris Road, 2nd Floor
Schenectady, NY 12303

Line # CPL
RW # ALT-L-NY-SC-012.000
Parcel # 101.-6-3.2
Municipality: RICHMONDVILLE
County: Schoharie
State: New York

RIGHT OF WAY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, HAROLD J. LODER, JR. and JAMES E. LODER, as tenants in common, 142 Hickory Hill Rd., RICHMONDVILLE, NY 12149 (hereinafter called GRANTOR, whether one or more), for and in consideration of the sum of Ten Dollars and 0/100 and other good and valuable consideration (\$10.00) cash in hand paid, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto **CONSTITUTION PIPELINE COMPANY, LLC**, a Delaware limited liability company whose address is 2800 Post Oak Boulevard, Houston, TX 77056-6106, its successors and assigns, (hereinafter called GRANTEE), a right of way and easement as shown on the attached drawing(s) marked "Exhibit A," for the purposes of laying, constructing, maintaining, operating, repairing, altering, replacing, changing the size of, and removing a pipeline (with valves, regulators, meters, fittings, appliances, tie-overs, and appurtenant facilities) for the transportation of gas, oil, petroleum products, or any other liquids, gases, or substances which can be transported through pipelines, under, upon, over, through and across the lands of Grantor, situated in the County of Schoharie, State of New York described as follows:

A certain tract or parcel of land located in the Town of Richmondville, containing 46.10 acres, more or less, and being more particularly described in that certain Warranty Deed with Lien Covenant from Harold J. Loder to Harold J. Loder, Jr. and James E. Loder recorded with the Schoharie County Clerk on October 9, 2012 at Deed Book 942, Page 1, of the public records of Schoharie County, State of New York.

Parcel ID #: 101.-6-3.2

The permanent right of way and easement shall be a strip of land identified as "Permanent Right of Way", all as shown on the drawing(s) marked "Exhibit A" attached hereto and made a part hereof.

Page 1 of 4

BOOK 967 PAGE 185

S-883

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

During the course of construction of the first of the pipelines, facilities or improvements authorized above, Grantee shall have the right to enter upon, clear off, and use an additional strip (or strips) of land contiguous to the right of way described above, such strip (or strips) of land being identified on the attached "Exhibit A" as "Temporary Work Space."

Grantor acknowledges that part of the consideration herein paid includes payment in full for any damages caused, or to be caused, by the construction of the first pipeline, facilities or improvements hereunder.

The Grantee shall have all other rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free and full right of ingress and egress over and across said lands and other lands of the Grantor to and from said right of way and easement, and the right, from time to time as it may find convenient, to cut or remove all trees, undergrowth and other obstructions from the permanent right of way.

The Grantor will not build any permanent structures on said permanent right of way or any part thereof, will not change the grade of said permanent right of way, or any part thereof, will not plant trees on said permanent right of way, or any part thereof, or use said permanent right of way or any part thereof for a road, or use said permanent right of way or any part thereof in such a way as to interfere with Grantee's immediate and unimpeded access to said permanent right of way, or otherwise interfere with Grantee's lawful exercise of any of the rights herein granted without first having obtained Grantee's approval in writing; and Grantor will not permit others to do any of said acts without first having obtained Grantee's approval in writing. No forbearance by Grantee to cut and remove any trees, undergrowth or other obstructions from the permanent right of way or to exercise any other right provided by Grantee hereunder for any period of time shall constitute a waiver of such right or limit Grantee's ability to exercise such right as it may find convenient.

This Right of Way Agreement and any and all rights of Grantee hereunder shall be freely assignable by Grantee, without the consent or approval of Grantor, and, if assigned by Grantee, any and all acts performable by Grantee hereunder may be performed by its assignee. Any assignment by Grantee, and its successors or assigns, of all of its or their respective rights hereunder shall completely relieve the assignor of any further duties, liabilities or obligations hereunder that accrue or arise from and after the effective date of such assignment, but not before.

TO HAVE AND TO HOLD said right of way and easement unto said Grantee, its successors and assigns, until such first pipeline be constructed and so long thereafter as a pipeline is maintained thereon; and the undersigned hereby bind themselves, their heirs, executors and administrators (and successors and assigns) to warrant and forever defend all and singular said premises unto the Grantee, its successors and

Page 2 of 4

BOOK 967 PAGE 186

S-884

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 PERC PDF (Unofficial) 05/05/2014

CO65-1
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assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Grantor shall not change the grade on the right of way nor place or construct upon the right of way any buildings, trees, structural improvements or other encroachments without the express written permission of the Grantee.

The Grantee agrees to bury all pipelines so that they will not interfere with the cultivation of crops (not trees) on the land, and also to pay for any actual physical damages to fences, growing crops and timber which may arise from laying, constructing, altering, repairing, removing, changing the size of and replacing such pipelines. The term "timber" is defined as trees or the wood grown for commercial sale.


Grantee, by the acceptance hereof, covenants and agrees:

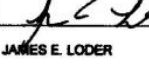
- (a) Except for the damages caused by the construction of the first pipeline, facilities or improvements authorized hereunder, Grantee will reimburse the Grantor for any loss or damage to property which Grantor may suffer as a consequence of the laying, constructing, altering, repairing, removing, changing the size of, or replacing any pipelines, facilities or improvements, in the exercise of its rights granted, except that neither the Grantor nor any person or firms holding under the Grantor shall assert any claims for severance or consequential damages.
- (b) It will defend and save harmless the Grantor from any claims or suits which may be asserted against the Grantor arising out of any negligent acts of the Grantee, its agents or employees, in its exercise of the rights herein granted.

See Exhibit "B" attached hereto for additional provisions to this agreement. In the event of a conflict between this agreement and Exhibit "B", the provisions of Exhibit "B" shall prevail.

It is agreed that this grant covers all the agreements between the parties as to the grant of the easements herein and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of this agreement.

IN TESTIMONY WHEREOF, the Grantor(s) has/have hereunto set forth their hand(s) and seal(s) this 20th day of December, 2013.

X 
HAROLD J. LODER, JR.
Notary Public
Schuette County, New York
Notary #146138983
My term expires 12/27/2017

X 
JAMES E. LODER
Notary Public
Schuette County, New York
Notary #146138983
My term expires 12/27/2017

Page 3 of 4

BOOK 967 PAGE 187

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 PERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

STATE OF New York)
COUNTY OF Schoharie) ss.:

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared HAROLD J. LODER, JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara Van Valkenburg
Notary Public

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Reg# 81VA6130663
My term expires 12/27/2017

STATE OF New York)
COUNTY OF Schoharie) ss.:

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared JAMES E. LODER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara Van Valkenburg
Notary Public

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Reg# 81VA6130663
My term expires 12/27/2017

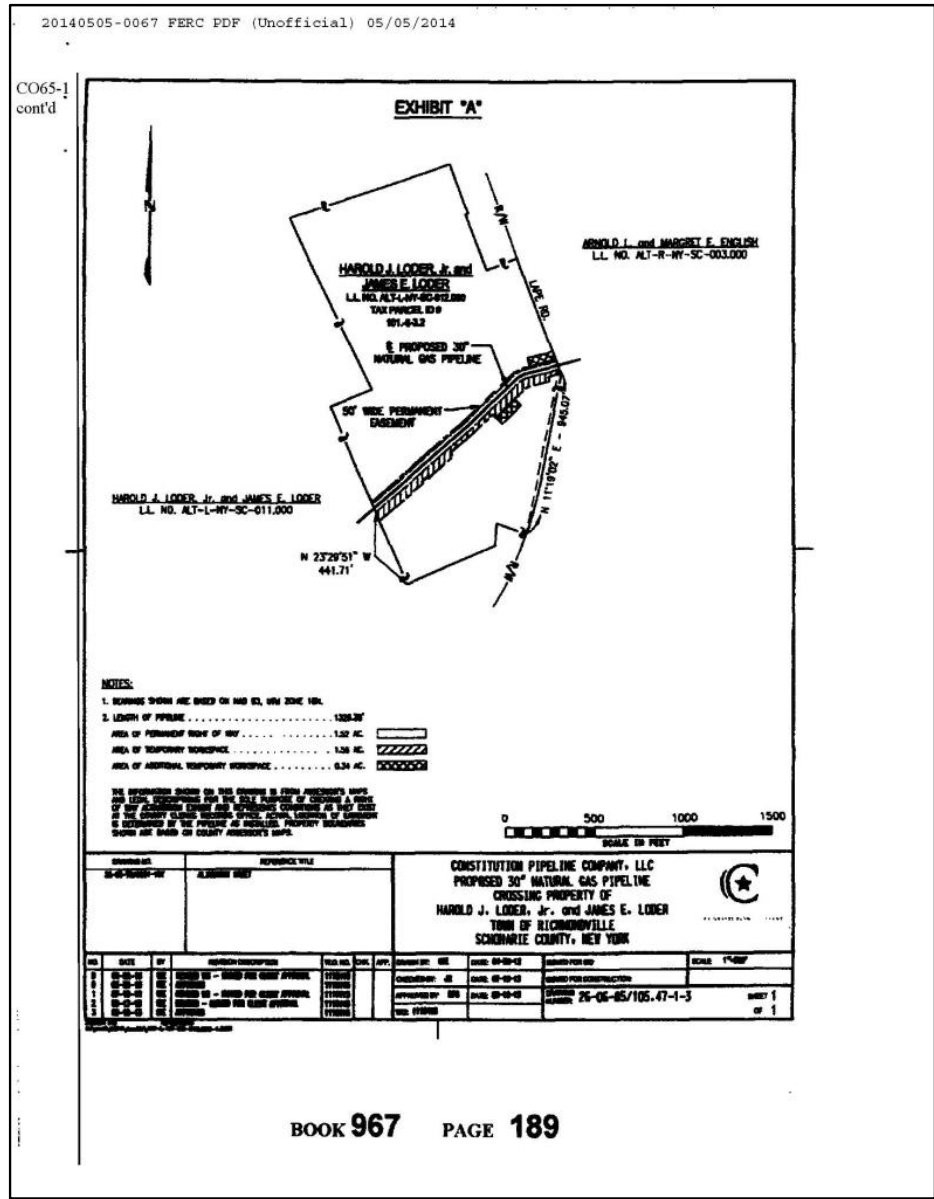
Page 4 of 4

BOOK **967** PAGE **188**

988-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)



COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

EXHIBIT "B"

Exhibit "B" is attached hereto and made part of that certain Right of Way Agreement between Harold J. Loder, Jr. and James E. Loder, Grantor, and Constitution Pipeline Company, LLC, a Delaware limited liability company, Grantee. The Permanent Right of Way and Temporary Work Space granted under that Agreement shall be referred to herein as the "Easement Area."

1. **Pipeline Limitation:** Not more than one (1) pipeline shall be laid under the terms and provisions of this instrument.
2. **Agency Clause:** All monies coming due under the terms of this Right Of Way Agreement shall be made payable to James E. Loder, 655 Beards Hollow Road, Richmondville, NY 12149, (50%) and Harold J. Loder, Jr., 142 Hickory Hill Road, Richmondville, NY 12149, (50%).
3. **Fences:** All fences of Grantor cut by Grantee during construction of said pipelines shall be repaired by Grantee at Grantee's sole expense.
4. **Livestock Crossing:** During construction, Grantee agrees that it will maintain mutually agreed upon ditch crossovers to allow livestock to have access to water and/or feed.
5. **Rock Removal:** If required by applicable permits, in actively cultivated lands and residential areas, rocks greater than four inches (4") in any dimension will be removed from the surface of the soil.
6. **Road Restoration:** Upon completion of the installation of the pipeline, Grantee agrees that any and all damages to private roads on Grantor's property resulting from Grantee's operation will be repaired and restored to as near original condition as possible. Should Grantor require access across the pipeline while under construction, Grantee shall provide a temporary crossing suitable for Grantor's vehicles within forty-eight (48) hours notice.
7. **Right of Way Crossing:** The Grantor may have the right to build a road across the Permanent Right of Way or some part thereof. Grantor must obtain Grantee's approval in writing for such a crossing, which approval shall not be unreasonably withheld, provided the Grantor agrees to the terms and specifications of Grantee. Should the weight loads proposed by Grantor require a crossing method other than matting or logs, Grantee, at its cost, shall pay for the cost of engineering and construction of the crossing to Grantee's specifications.
8. **Pipeline Depth and Field Tiles:** All pipelines which Constitution Pipeline Company, LLC, Grantee, may place on cultivated land shall be buried so that the top of the pipeline is at least forty-eight (48) inches below the surface of the ground. In the event the pipeline intersects with field tiles of Grantor, Constitution Pipeline Company, LLC shall install the pipeline below the Grantor's existing field tiles.

Page 1 of 2

BOOK 967 PAGE 190

888-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Notwithstanding the foregoing, in no event will Grantee be required to install a pipeline deeper than forty-eight (48) inches below the surface of the ground.

9. **Topsoil Salvage and Restoration:** Grantee shall use its best efforts to stockpile, save, replace, grade and reseed any/all topsoil disturbed by its operations, in accordance with applicable permits in agricultural areas. During restoration, in accordance with applicable permits, Grantee shall use its best efforts to prevent undue compaction of the disturbed area. If necessary Grantee will use scraping/tilling/raking the backfill in the disturbed area with a ripper claw or similar device prior to spreading and grading the topsoil which it salvaged.
10. **Timber Compensation and Stacking:** Any requested timber will be cut and placed at a reasonable location adjacent to the Easement Area when timber clearing starts. This placement will be on the Grantor's property only. Location to be mutually agreed upon by Grantor and Grantee. Grantee will compensate Grantor for the reasonable market value of any marketable timber removed from the Easement Area.
11. **Temporary Fencing:** Upon Grantor's written request, Grantee shall, at Grantee's sole cost and expense, design and install temporary fencing for the protection of livestock during construction activities.
12. **Land Rights within Public Roads and Public Waters:** Grantor acknowledges that the sum paid to Grantor under this Agreement includes the agreed upon compensation for the acquisition of any rights or interest that the Grantor may hold in Lape Road, and that area is included in the Easement Area under this Agreement.

Page 2 of 2

BOOK 967 PAGE 191


688-S

COMPANIES AND ORGANIZATIONS

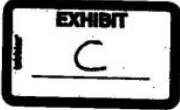
CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 PERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd



Schoharie County Clerk
284 Main Street, PO Box 549
Schoharie, NY 12157



Return to:
DOYLE LAND SERVICING
CONSTITUTION PIPELINE COMPANY LLC
286 MORRIS ROAD 2ND FLOOR
SCHENECTADY NY 12303

Instrument **Deed, Right of Way**

Document Number: 655006 **Book:** 967 **Page:** 176 **Town:** Richmondville


Grantor
LODER, HAROLD J JR
LODER, JAMES E

Grantee
CONSTITUTION PIPELINE COMPANY LLC

Number of Pages: 8
Amount: \$10000.00
Recorded Date/Time: 12/27/2013 at 10:28 AM
Receipt Number: 118506

Transfer Tax Receipt
Schoharie County Clerk Received:
Trans Tax # 588
.....\$40.00

Note: ** DO NOT REMOVE - THIS PAGE IS PART OF THE DOCUMENT **
THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &
319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.


M Indica Jaycox, County Clerk

BOOK 967 PAGE 176

068-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 PERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Record and Return to:
Doyle Land Services, Inc. in service to
Constitution Pipeline Company, LLC
296 Morris Road, 2nd Floor
Schenectady, NY 12303

Schoharie County Clerk
Document Number 655006
Rcvd 12/27/2013 10:28:34 AM

Line # CPL
RW # ALT-L-NY-SC-011.000
Parcel # 90.-3-11
Municipality: RICHMONDVILLE
County: Schoharie
State: New York

RIGHT OF WAY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, HAROLD J. LODER, JR. and JAMES E. LODER, as tenants in common, 142 Hickory Hill Rd., Richmondville, NY 12149 (hereinafter called GRANTOR, whether one or more), for and in consideration of the sum of Ten Dollars and 0/100 and other good and valuable consideration (\$10.00) cash in hand paid, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto **CONSTITUTION PIPELINE COMPANY, LLC**, a Delaware limited liability company whose address is 2800 Post Oak Boulevard, Houston, TX 77058-6106, its successors and assigns, (hereinafter called GRANTEE), a right of way and easement as shown on the attached drawing(s) marked "Exhibit A," for the purposes of laying, constructing, maintaining, operating, repairing, altering, replacing, changing the size of, and removing a pipeline (with valves, regulators, meters, fittings, appliances, tie-overs, and appurtenant facilities) for the transportation of gas, oil, petroleum products, or any other liquids, gases, or substances which can be transported through pipelines, under, upon, over, through and across the lands of Grantor, situated in the County of Schoharie, State of New York described as follows:

A certain tract or parcel of land located in the Town of Richmondville, containing 91.50 acres, more or less, and being more particularly described in that certain Warranty Deed with Lien Covenant from Harold J. Loder to Harold J. Loder, Jr. and James E. Loder recorded with the Schoharie County Clerk on October 9, 2012 at Deed Book 942, Page 1, of the public records of Schoharie County, State of New York.

Parcel ID #: 90.-3-11

The permanent right of way and easement shall be a strip of land identified as "Permanent Right of Way", all as shown on the drawing(s) marked "Exhibit A" attached hereto and made a part hereof.

Page 1 of 4

BOOK 967 PAGE 177

168-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

During the course of construction of the first of the pipelines, facilities or improvements authorized above, Grantee shall have the right to enter upon, clear off, and use an additional strip (or strips) of land contiguous to the right of way described above, such strip (or strips) of land being identified on the attached "Exhibit A" as "Temporary Work Space."

Grantor acknowledges that part of the consideration herein paid includes payment in full for any damages caused, or to be caused, by the construction of the first pipeline, facilities or improvements hereunder.

The Grantee shall have all other rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free and full right of ingress and egress over and across said lands and other lands of the Grantor to and from said right of way and easement, and the right, from time to time as it may find convenient, to cut or remove all trees, undergrowth and other obstructions from the permanent right of way.

The Grantor will not build any permanent structures on said permanent right of way or any part thereof, will not change the grade of said permanent right of way, or any part thereof, will not plant trees on said permanent right of way, or any part thereof, or use said permanent right of way or any part thereof for a road, or use said permanent right of way or any part thereof in such a way as to interfere with Grantee's immediate and unimpeded access to said permanent right of way, or otherwise interfere with Grantee's lawful exercise of any of the rights herein granted without first having obtained Grantee's approval in writing; and Grantor will not permit others to do any of said acts without first having obtained Grantee's approval in writing. No forbearance by Grantee to cut and remove any trees, undergrowth or other obstructions from the permanent right of way or to exercise any other right provided by Grantee hereunder for any period of time shall constitute a waiver of such right or limit Grantee's ability to exercise such right as it may find convenient.

This Right of Way Agreement and any and all rights of Grantee hereunder shall be freely assignable by Grantee, without the consent or approval of Grantor, and, if assigned by Grantee, any and all acts performable by Grantee hereunder may be performed by its assignee. Any assignment by Grantee, and its successors or assigns, of all of its or their respective rights hereunder shall completely relieve the assignor of any further duties, liabilities or obligations hereunder that accrue or arise from and after the effective date of such assignment, but not before.

TO HAVE AND TO HOLD said right of way and easement unto said Grantee, its successors and assigns, until such first pipeline be constructed and so long thereafter as a pipeline is maintained thereon; and the undersigned hereby bind themselves, their heirs, executors and administrators (and successors and assigns) to warrant and forever defend all and singular said premises unto the Grantee, its successors and

Page 2 of 4

BOOK 967 PAGE 178

S-892

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Grantor shall not change the grade on the right of way nor place or construct upon the right of way any buildings, trees, structural improvements or other encroachments without the express written permission of the Grantee.

The Grantee agrees to bury all pipelines so that they will not interfere with the cultivation of crops (not trees) on the land, and also to pay for any actual physical damages to fences, growing crops and timber which may arise from laying, constructing, altering, repairing, removing, changing the size of and replacing such pipelines. The term "timber" is defined as trees or the wood grown for commercial sale.

Grantee, by the acceptance hereof, covenants and agrees:

- (a) Except for the damages caused by the construction of the first pipeline, facilities or improvements authorized hereunder, Grantee will reimburse the Grantor for any loss or damage to property which Grantor may suffer as a consequence of the laying, constructing, altering, repairing, removing, changing the size of, or replacing any pipelines, facilities or improvements, in the exercise of its rights granted, except that neither the Grantor nor any person or firms holding under the Grantor shall assert any claims for severance or consequential damages.
- (b) It will defend and save harmless the Grantor from any claims or suits which may be asserted against the Grantor arising out of any negligent acts of the Grantee, its agents or employees, in its exercise of the rights herein granted.

See Exhibit "B" attached hereto for additional provisions to this agreement. In the event of a conflict between this agreement and Exhibit "B", the provisions of Exhibit "B" shall prevail.

It is agreed that this grant covers all the agreements between the parties as to the grant of the easements herein and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of this agreement.

IN TESTIMONY WHEREOF, the Grantor(s) has/have hereunto set his/her/their hand(s) and seal(s) this 20th day of December, 2012.

X

HAROLD J. LODER, JR.

X

JAMES E. LODER

Page 3 of 4

Barbara VanAlstonsburg
Notary Public
Schroton County, New York
Notary #146130000
My term expires 12/27/20

Barbara VanAlstonsburg
Notary Public
Schroton County, New York
Notary #146130000
My term expires 12/27/20

BOOK 967 PAGE 179

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

STATE OF New York)
COUNTY OF Schoharie) ss.:
)

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared HAROLD J. LODER, JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara VanValkenburg
Notary Public

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Regd 01VAS130003
My term expires 12/27/2017

STATE OF New York)
COUNTY OF Schoharie) ss.:
)

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared JAMES E. LODER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara VanValkenburg
Notary Public

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Regd 01VAS130003
My term expires 12/27/2017

Page 4 of 4

BOOK 967 PAGE 180

S-894

C065 – Center for Sustainable Rural Communities (cont'd)

CO65-1
cont'd



COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

EXHIBIT "B"

Exhibit "B" is attached hereto and made part of that certain Right of Way Agreement between Harold J. Loder, Jr. and James E. Loder, as tenants in common, Grantor, and Constitution Pipeline Company, LLC, a Delaware limited liability company, Grantee. The Permanent Right of Way and Temporary Work Space granted under that Agreement shall be referred to herein as the "Easement Area."

1. **Pipeline Limitation:** Not more than one (1) pipeline shall be laid under the terms and provisions of this instrument.
2. **Agency Clause:** All monies coming due under the terms of this Right Of Way Agreement shall be made payable to James E. Loder, 655 Beards Hollow Road, Richmondville, NY 12149, (50%) and Harold J. Loder, Jr., 142 Hickory Hill Road, Richmondville, NY 12149, (50%).
3. **Fences:** All fences of Grantor cut by Grantee during construction of said pipelines shall be repaired by Grantee at Grantee's sole expense.
4. **Livestock Crossing:** During construction, Grantee agrees that it will maintain mutually agreed upon ditch crossovers to allow livestock to have access to water and/or feed.
5. **Rock Removal:** If required by applicable permits, in actively cultivated lands and residential areas, rocks greater than four inches (4") in any dimension will be removed from the surface of the soil.
6. **Road Restoration:** Upon completion of the installation of the pipeline, Grantee agrees that any and all damages to private roads on Grantor's property resulting from Grantee's operation will be repaired and restored to as near original condition as possible. Should Grantor require access across the pipeline while under construction, Grantee shall provide a temporary crossing suitable for Grantor's vehicles within forty-eight (48) hours notice.
7. **Right of Way Crossing:** The Grantor may have the right to build a road across the Permanent Right of Way or some part thereof. Grantor must obtain Grantee's approval in writing for such a crossing, which approval shall not be unreasonably withheld, provided the Grantor agrees to the terms and specifications of Grantee. Should the weight loads proposed by Grantor require a crossing method other than matting or logs, Grantee, at its cost, shall pay for the cost of engineering and construction of the crossing to Grantee's specifications.
8. **Pipeline Depth and Field Tiles:** All pipelines which Constitution Pipeline Company, LLC, Grantee, may place on cultivated land shall be buried so that the top of the pipeline is at least forty-eight (48) inches below the surface of the ground. In the event the pipeline intersects with field tiles of Grantor, Constitution Pipeline Company, LLC shall install the pipeline below the Grantor's existing field tiles.

Page 1 of 2

BOOK 967 PAGE 182

968-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

- Notwithstanding the foregoing, in no event will Grantee be required to install a pipeline deeper than forty-eight (48) inches below the surface of the ground.
9. **Topsoil Salvage and Restoration:** Grantee shall use its best efforts to stockpile, save, replace, grade and reseed any/all topsoil disturbed by its operations, in accordance with applicable permits in agricultural areas. During restoration, in accordance with applicable permits, Grantee shall use its best efforts to prevent undue compaction of the disturbed area. If necessary Grantee will use scraping/tilling/raking the backfill in the disturbed area with a ripper claw or similar device prior to spreading and grading the topsoil which it salvaged.
10. **Timber Compensation and Stacking:** Any requested timber will be cut and placed at a reasonable location adjacent to the Easement Area when timber clearing starts. This placement will be on the Grantor's property only. Location to be mutually agreed upon by Grantor and Grantee. Grantee will compensate Grantor for the reasonable market value of any marketable timber removed from the Easement Area.
11. **Temporary Fencing:** Upon Grantor's written request, Grantee shall, at Grantee's sole cost and expense, design and install temporary fencing for the protection of livestock during construction activities.

Page 2 of 2

BOOK 967 PAGE 183


S-897

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd



Schoharie County Clerk
284 Main Street, PO Box 549
Schoharie, NY 12157

EXHIBIT
D

Return to:
DOYLE LAND SERVICING
CONSTITUTION PIPELINE COMPANY LLC
296 MORRIS ROAD 2ND FLOOR
SCHENECTADY NY 12303

Instrument **Deed, Right of Way**

Document Number: 655002 **Book:** 967 **Page:** 167 **Town:** Summit

Grantor
LODER, HAROLD J JR
LODER, JAMES E

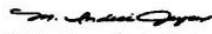
Grantee
CONSTITUTION PIPELINE COMPANY LLC

Number of Pages: 9
Amount: \$12500.00

Recorded Date/Time: 12/27/2013 at 10:21 AM
Receipt Number: 118505

Transfer Tax Receipt
Schoharie County Clerk Received:
Trans Tax # 588
.....\$60.00

Note: ** DO NOT REMOVE - THIS PAGE IS PART OF THE DOCUMENT **
THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &
319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.


M Indica Jaycox, County Clerk

BOOK 967 PAGE 167

868-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Schoharie County Clerk
Document Number 635002
Rec'd 12/27/2013 10:21:09 AM

Record and Return to:
Doyle Land Services, Inc. in service to
Constitution Pipeline Company, LLC
296 Morris Road, 2nd Floor
Schenectady, NY 12303

Line # CPL
RW # ALT-L-NY-SC-008.000
Parcel # 101.-5-1
Municipality: SUMMIT
County: Schoharie
State: New York

RIGHT OF WAY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, HAROLD J. LODER, JR. and JAMES E. LODER, 142 Hickory Hill Rd., Richmondville, NY 12149 (hereinafter called GRANTOR, whether one or more), for and in consideration of the sum of Ten Dollars and 0/100 and other good and valuable consideration (\$10.00) cash in hand paid, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto CONSTITUTION PIPELINE COMPANY, LLC, a Delaware limited liability company whose address is 2800 Post Oak Boulevard, Houston, TX 77056-6106, its successors and assigns, (hereinafter called GRANTEE), a right of way and easement as shown on the attached drawing(s) marked "Exhibit A," for the purposes of laying, constructing, maintaining, operating, repairing, altering, replacing, changing the size of, and removing a pipeline (with valves, regulators, meters, fittings, appliances, tie-overs, and appurtenant facilities) for the transportation of gas, oil, petroleum products, or any other liquids, gases, or substances which can be transported through pipelines, under, upon, over, through and across the lands of Grantor, situated in the County of Schoharie, State of New York described as follows:

A certain tract or parcel of land located in the Town of Summit, containing 67.50 acres, more or less, and being more particularly described in that certain Warranty Deed from George W. Dibble and Clara E. Dibble to Harold E. Loder recorded with the Schoharie County Clerk on April 12, 1946 at Deed Book 244, Page 11, of the public records of Schoharie County, State of New York. A more recent deed conveying said premises from Harold E. Loder to Harold J. Loder, Jr. and James E. Loder was recorded with the Schoharie County Clerk on September 23, 1983 at Deed Book 397, Page 838, but was lost in a flood of the county archive and is not and will not be available for viewing.

Parcel ID #: 101.-5-1

Page 1 of 5

BOOK 967 PAGE 168

S-899

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

The permanent right of way and easement shall be a strip of land identified as "Permanent Right of Way", all as shown on the drawing(s) marked "Exhibit A" attached hereto and made a part hereof.

During the course of construction of the first of the pipelines, facilities or improvements authorized above, Grantee shall have the right to enter upon, clear off, and use an additional strip (or strips) of land contiguous to the right of way described above, such strip (or strips) of land being identified on the attached "Exhibit A" as "Temporary Work Space."

Grantor acknowledges that part of the consideration herein paid includes payment in full for any damages caused, or to be caused, by the construction of the first pipeline, facilities or improvements hereunder.

The Grantee shall have all other rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free and full right of ingress and egress over and across said lands and other lands of the Grantor to and from said right of way and easement, and the right, from time to time as it may find convenient, to cut or remove all trees, undergrowth and other obstructions from the permanent right of way.

The Grantor will not build any permanent structures on said permanent right of way or any part thereof, will not change the grade of said permanent right of way, or any part thereof, will not plant trees on said permanent right of way, or any part thereof, or use said permanent right of way or any part thereof for a road, or use said permanent right of way or any part thereof in such a way as to interfere with Grantee's immediate and unimpeded access to said permanent right of way, or otherwise interfere with Grantee's lawful exercise of any of the rights herein granted without first having obtained Grantee's approval in writing; and Grantor will not permit others to do any of said acts without first having obtained Grantee's approval in writing. No forbearance by Grantee to cut and remove any trees, undergrowth or other obstructions from the permanent right of way or to exercise any other right provided by Grantee hereunder for any period of time shall constitute a waiver of such right or limit Grantee's ability to exercise such right as it may find convenient.

This Right of Way Agreement and any and all rights of Grantee hereunder shall be freely assignable by Grantee, without the consent or approval of Grantor, and, if assigned by Grantee, any and all acts performable by Grantee hereunder may be performed by its assignee. Any assignment by Grantee, and its successors or assigns, of all of its or their respective rights hereunder shall completely relieve the assignor of any further duties, liabilities or obligations hereunder that accrue or arise from and after the effective date of such assignment, but not before.

TO HAVE AND TO HOLD said right of way and easement unto said Grantee, its successors and assigns, until such first pipeline be constructed and so long thereafter

Page 2 of 5

BOOK 967 PAGE 169

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

as a pipeline is maintained thereon; and the undersigned hereby bind themselves, their heirs, executors and administrators (and successors and assigns) to warrant and forever defend all and singular said premises unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Grantor shall not change the grade on the right of way nor place or construct upon the right of way any buildings, trees, structural improvements or other encroachments without the express written permission of the Grantee.

The Grantee agrees to bury all pipelines so that they will not interfere with the cultivation of crops (not trees) on the land, and also to pay for any actual physical damages to fences, growing crops and timber which may arise from laying, constructing, altering, repairing, removing, changing the size of and replacing such pipelines. The term "timber" is defined as trees or the wood grown for commercial sale.

Grantee, by the acceptance hereof, covenants and agrees:

- (a) Except for the damages caused by the construction of the first pipeline, facilities or improvements authorized hereunder, Grantee will reimburse the Grantor for any loss or damage to property which Grantor may suffer as a consequence of the laying, constructing, altering, repairing, removing, changing the size of, or replacing any pipelines, facilities or improvements, in the exercise of its rights granted, except that neither the Grantor nor any person or firms holding under the Grantor shall assert any claims for severance or consequential damages.
- (b) It will defend and save harmless the Grantor from any claims or suits which may be asserted against the Grantor arising out of any negligent acts of the Grantee, its agents or employees, in its exercise of the rights herein granted.

See Exhibit "B" attached hereto for additional provisions to this agreement. In the event of a conflict between this agreement and Exhibit "B", the provisions of Exhibit "B" shall prevail.

It is agreed that this grant covers all the agreements between the parties as to the grant of the easements herein and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of this agreement.

Page 3 of 5

BOOK 967 PAGE 170

106-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

IN TESTIMONY WHEREOF, the Grantor(s) has/have hereunto set her/his/their
hand(s) and seal(s) this 20th day of December, 2013.

X [Signature]
HAROLD G. LODER, JR.
Barbara VanValkenburg
Notary Public
Scholarie County, N York
Reg# 91VAS13
My term expires 12/27 2017

X [Signature]
JAMES E. LODER
(SEAL)
Barbara VanValkenburg
Notary Public
Scholarie County, N York
Reg# 91VAS136
My term expires 12/27 2017

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Page 4 of 5

BOOK 967 PAGE 171

S-902

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

STATE OF New York)
COUNTY OF Schoharie) ss.:

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared HAROLD J. LODER, JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara VanValkenburg
Notary Public

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Reg'd 01VA813863
My term expires 12/27/2017

STATE OF New York)
COUNTY OF Schoharie) ss.:

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared JAMES E. LODER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara VanValkenburg
Notary Public

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Reg'd 01VA813863
My term expires 12/27/2017

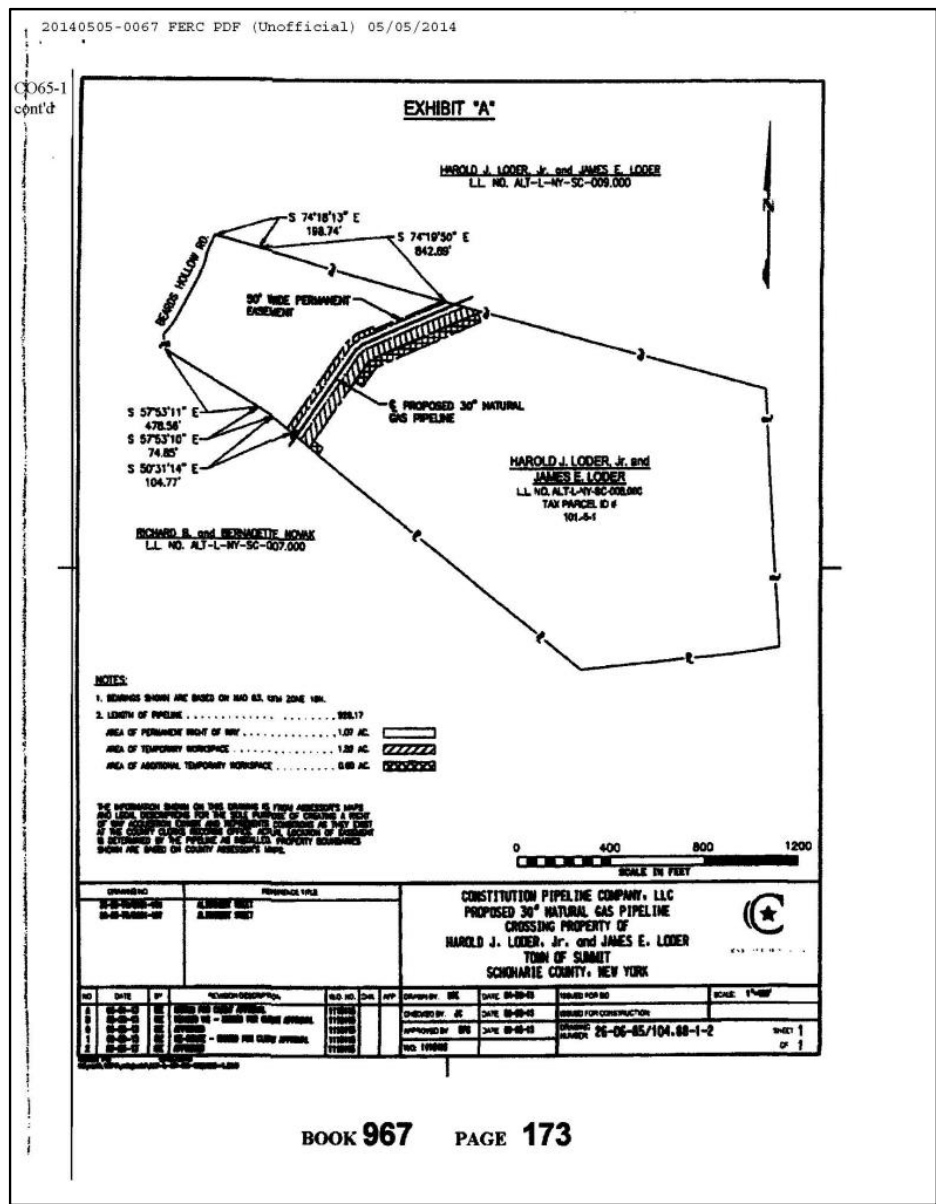
Page 5 of 5

BOOK **967** PAGE **172**

S-903

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)



S-904

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

EXHIBIT "B"

Exhibit "B" is attached hereto and made part of that certain Right of Way Agreement between Harold J. Loder, Jr. and James E. Loder, Grantor, and Constitution Pipeline Company, LLC, a Delaware limited liability company, Grantee. The Permanent Right of Way and Temporary Work Space granted under that Agreement shall be referred to herein as the "Easement Area."

1. **Pipeline Limitation:** Not more than one (1) pipeline shall be laid under the terms and provisions of this instrument.
2. **Agency Clause:** All monies coming due under the terms of this Right Of Way Agreement shall be made payable to James E. Loder, 655 Beards Hollow Road, Richmondville, NY 12149, (50%) and Harold J. Loder, Jr., 142 Hickory Hill Road, Richmondville, NY 12149, (50%).
3. **Fences:** All fences of Grantor cut by Grantee during construction of said pipelines shall be repaired by Grantee at Grantee's sole expense.
4. **Livestock Crossing:** During construction, Grantee agrees that it will maintain mutually agreed upon ditch crossovers to allow livestock to have access to water and/or feed.
5. **Rock Removal:** If required by applicable permits, in actively cultivated lands and residential areas, rocks greater than four inches (4") in any dimension will be removed from the surface of the soil.
6. **Road Restoration:** Upon completion of the installation of the pipeline, Grantee agrees that any and all damages to private roads on Grantor's property resulting from Grantee's operation will be repaired and restored to as near original condition as possible. Should Grantor require access across the pipeline while under construction, Grantee shall provide a temporary crossing suitable for Grantor's vehicles within forty-eight (48) hours notice.
7. **Right of Way Crossing:** The Grantor may have the right to build a road across the Permanent Right of Way or some part thereof. Grantor must obtain Grantee's approval in writing for such a crossing, which approval shall not be unreasonably withheld, provided the Grantor agrees to the terms and specifications of Grantee. Should the weight loads proposed by Grantor require a crossing method other than matting or logs, Grantee, at its cost, shall pay for the cost of engineering and construction of the crossing to Grantee's specifications.
8. **Pipeline Depth and Field Tiles:** All pipelines which Constitution Pipeline Company, LLC, Grantee, may place on cultivated land shall be buried so that the top of the pipeline is at least forty-eight (48) inches below the surface of the ground. In the event the pipeline intersects with field tiles of Grantor, Constitution Pipeline Company, LLC shall install the pipeline below the Grantor's existing field tiles.

Page 1 of 2

BOOK 967 PAGE 174

S-905

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

- Notwithstanding the foregoing, in no event will Grantee be required to install a pipeline deeper than forty-eight (48) inches below the surface of the ground.
9. **Topsoil Salvage and Restoration:** Grantee shall use its best efforts to stockpile, save, replace, grade and reseed any/all topsoil disturbed by its operations, in accordance with applicable permits in agricultural areas. During restoration, in accordance with applicable permits, Grantee shall use its best efforts to prevent undue compaction of the disturbed area. If necessary Grantee will use scraping/tilling/raking the backfill in the disturbed area with a ripper claw or similar device prior to spreading and grading the topsoil which it salvaged.
10. **Timber Compensation and Stacking:** Any requested timber will be cut and placed at a reasonable location adjacent to the Easement Area when timber clearing starts. This placement will be on the Grantor's property only. Location to be mutually agreed upon by Grantor and Grantee. Grantee will compensate Grantor for the reasonable market value of any marketable timber removed from the Easement Area.
11. **Temporary Fencing:** Upon Grantor's written request, Grantee shall, at Grantee's sole cost and expense, design and install temporary fencing for the protection of livestock during construction activities.

Page 2 of 2

BOOK 967 PAGE 175


906-S

COMPANIES AND ORGANIZATIONS


CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd



Schoharie County Clerk
284 Main Street, PO Box 549
Schoharie, NY 12157



Return to:
DOYLE LAND SERVICING
CONSTITUTION PIPELINE COMPANY LLC
296 MORRIS ROAD 2ND FLOOR
SCHENECTADY NY 12303

Instrument **Deed, Right of Way**

Document Number: 655002 **Book:** 967 **Page:** 167 **Town:** Summit

Grantor
LODER, HAROLD J JR
LODER, JAMES E

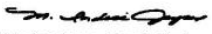
Grantee
CONSTITUTION PIPELINE COMPANY LLC

Number of Pages: 9 **Transfer Tax Receipt**
Amount \$12500.00 **Schoharie County Clerk Received:**
Trans Tax # 588
.....\$60.00

Recorded Date/Time 12/27/2013 at 10:21 AM

Receipt Number 118505

Note: ** DO NOT REMOVE - THIS PAGE IS PART OF THE DOCUMENT **
THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &
319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.


M Indica Jaycox, County Clerk

BOOK 967 PAGE 167

S-907

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Schoharie County Clerk
Document Number 65002
Rvd 12/27/2013 10:21:09 #

Record and Return to:
Doyle Land Services, Inc. in service to
Constitution Pipeline Company, LLC
296 Morris Road, 2nd Floor
Schenectady, NY 12303

Line # CPL
RAW # ALT-L-NY-SC-008.000
Parcel # 101.-5-1
Municipality: SUMMIT
County: Schoharie
State: New York

RIGHT OF WAY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, HAROLD J. LODER, JR. and JAMES E. LODER, 142 Hickory Hill Rd., Richmondville, NY 12149 (hereinafter called GRANTOR, whether one or more), for and in consideration of the sum of Ten Dollars and 0/100 and other good and valuable consideration (\$10.00) cash in hand paid, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto CONSTITUTION PIPELINE COMPANY, LLC, a Delaware limited liability company whose address is 2800 Post Oak Boulevard, Houston, TX 77068-6106, its successors and assigns, (hereinafter called GRANTEE), a right of way and easement as shown on the attached drawing(s) marked "Exhibit A," for the purposes of laying, constructing, maintaining, operating, repairing, altering, replacing, changing the size of, and removing a pipeline (with valves, regulators, meters, fittings, appliances, tie-overs, and appurtenant facilities) for the transportation of gas, oil, petroleum products, or any other liquids, gases, or substances which can be transported through pipelines, under, upon, over, through and across the lands of Grantor, situated in the County of Schoharie, State of New York described as follows:

A certain tract or parcel of land located in the Town of Summit, containing 67.50 acres, more or less, and being more particularly described in that certain Warranty Deed from George W. Dibble and Clara E. Dibble to Harold E. Loder recorded with the Schoharie County Clerk on April 12, 1946 at Deed Book 244, Page 11, of the public records of Schoharie County, State of New York. A more recent deed conveying said premises from Harold E. Loder to Harold J. Loder, Jr. and James E. Loder was recorded with the Schoharie County Clerk on September 23, 1983 at Deed Book 397, Page 838, but was lost in a flood of the county archive and is not and will not be available for viewing.

Parcel ID #: 101.-5-1

Page 1 of 5

BOOK 967 PAGE 168

806-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

The permanent right of way and easement shall be a strip of land identified as "Permanent Right of Way", all as shown on the drawing(s) marked "Exhibit A" attached hereto and made a part hereof.

During the course of construction of the first of the pipelines, facilities or improvements authorized above, Grantee shall have the right to enter upon, clear off, and use an additional strip (or strips) of land contiguous to the right of way described above, such strip (or strips) of land being identified on the attached "Exhibit A" as "Temporary Work Space."

Grantor acknowledges that part of the consideration herein paid includes payment in full for any damages caused, or to be caused, by the construction of the first pipeline, facilities or improvements hereunder.

The Grantee shall have all other rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free and full right of ingress and egress over and across said lands and other lands of the Grantor to and from said right of way and easement, and the right, from time to time as it may find convenient, to cut or remove all trees, undergrowth and other obstructions from the permanent right of way.

The Grantor will not build any permanent structures on said permanent right of way or any part thereof, will not change the grade of said permanent right of way, or any part thereof, will not plant trees on said permanent right of way, or any part thereof, or use said permanent right of way or any part thereof for a road, or use said permanent right of way or any part thereof in such a way as to interfere with Grantee's immediate and unimpeded access to said permanent right of way, or otherwise interfere with Grantee's lawful exercise of any of the rights herein granted without first having obtained Grantee's approval in writing; and Grantor will not permit others to do any of said acts without first having obtained Grantee's approval in writing. No forbearance by Grantee to cut and remove any trees, undergrowth or other obstructions from the permanent right of way or to exercise any other right provided by Grantee hereunder for any period of time shall constitute a waiver of such right or limit Grantee's ability to exercise such right as it may find convenient.

This Right of Way Agreement and any and all rights of Grantee hereunder shall be freely assignable by Grantee, without the consent or approval of Grantor, and, if assigned by Grantee, any and all acts performable by Grantee hereunder may be performed by its assignee. Any assignment by Grantee, and its successors or assigns, of all of its or their respective rights hereunder shall completely relieve the assignor of any further duties, liabilities or obligations hereunder that accrue or arise from and after the effective date of such assignment, but not before.

TO HAVE AND TO HOLD said right of way and easement unto said Grantee, its successors and assigns, until such first pipeline be constructed and so long thereafter

Page 2 of 5

BOOK 967 PAGE 169

S 909

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

as a pipeline is maintained thereon; and the undersigned hereby bind themselves, their heirs, executors and administrators (and successors and assigns) to warrant and forever defend all and singular said premises unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Grantor shall not change the grade on the right of way nor place or construct upon the right of way any buildings, trees, structural improvements or other encroachments without the express written permission of the Grantee.

The Grantee agrees to bury all pipelines so that they will not interfere with the cultivation of crops (not trees) on the land, and also to pay for any actual physical damages to fences, growing crops and timber which may arise from laying, constructing, altering, repairing, removing, changing the size of and replacing such pipelines. The term "timber" is defined as trees or the wood grown for commercial sale.

Grantee, by the acceptance hereof, covenants and agrees:

- (a) Except for the damages caused by the construction of the first pipeline, facilities or improvements authorized hereunder, Grantee will reimburse the Grantor for any loss or damage to property which Grantor may suffer as a consequence of the laying, constructing, altering, repairing, removing, changing the size of, or replacing any pipelines, facilities or improvements, in the exercise of its rights granted, except that neither the Grantor nor any person or firms holding under the Grantor shall assert any claims for severance or consequential damages.
- (b) It will defend and save harmless the Grantor from any claims or suits which may be asserted against the Grantor arising out of any negligent acts of the Grantee, its agents or employees, in its exercise of the rights herein granted.

See Exhibit "B" attached hereto for additional provisions to this agreement. In the event of a conflict between this agreement and Exhibit "B", the provisions of Exhibit "B" shall prevail.

It is agreed that this grant covers all the agreements between the parties as to the grant of the easements herein and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of this agreement.

Page 3 of 5

BOOK **967** PAGE **170**

S-910

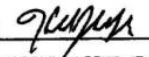
COMPANIES AND ORGANIZATIONS

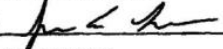
CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

IN TESTIMONY WHEREOF, the Grantor(s) has/have hereunto set forth their
hand(s) and seal(s) this 20th day of December, 2013.

X 
HAROLD O. LODER, JR.

X 
JAMES E. LODER

(SEAL)

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Reg# 91VAB13
My term expires 12/31/2014

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Reg# 91VAB1306
My term expires 12/31/2014

Intentionally left blank

Page 4 of 5

BOOK 967 PAGE 171

116-S

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

STATE OF New York)
COUNTY OF Schoharie) ss.:

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared HAROLD J. LODER, JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara VanValkenburg
Notary Public

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Reg# 01VA6130003
My term expires 12/27/2017

STATE OF New York)
COUNTY OF Schoharie) ss.:

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared JAMES E. LODER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara VanValkenburg
Notary Public

Barbara VanValkenburg
Notary Public
Schoharie County, New York
Reg# 01VA6130003
My term expires 12/27/2017

Page 5 of 5

BOOK **967** PAGE **172**

S-912

C065 – Center for Sustainable Rural Communities (cont'd)

CO
65-1
cont'd



COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

EXHIBIT "B"

Exhibit "B" is attached hereto and made part of that certain Right of Way Agreement between Harold J. Loder, Jr. and James E. Loder, Grantor, and Constitution Pipeline Company, LLC, a Delaware limited liability company, Grantee. The Permanent Right of Way and Temporary Work Space granted under that Agreement shall be referred to herein as the "Easement Area."

1. **Pipeline Limitation:** Not more than one (1) pipeline shall be laid under the terms and provisions of this instrument.
2. **Agency Clause:** All monies coming due under the terms of this Right Of Way Agreement shall be made payable to James E. Loder, 655 Beards Hollow Road, Richmondville, NY 12149, (50%) and Harold J. Loder, Jr., 142 Hickory Hill Road, Richmondville, NY 12149, (50%).
3. **Fences:** All fences of Grantor cut by Grantee during construction of said pipelines shall be repaired by Grantee at Grantee's sole expense.
4. **Livestock Crossing:** During construction, Grantee agrees that it will maintain mutually agreed upon ditch crossovers to allow livestock to have access to water and/or feed.
5. **Rock Removal:** If required by applicable permits, in actively cultivated lands and residential areas, rocks greater than four inches (4") in any dimension will be removed from the surface of the soil.
6. **Road Restoration:** Upon completion of the installation of the pipeline, Grantee agrees that any and all damages to private roads on Grantor's property resulting from Grantee's operation will be repaired and restored to as near original condition as possible. Should Grantor require access across the pipeline while under construction, Grantee shall provide a temporary crossing suitable for Grantor's vehicles within forty-eight (48) hours notice.
7. **Right of Way Crossing:** The Grantor may have the right to build a road across the Permanent Right of Way or some part thereof. Grantor must obtain Grantee's approval in writing for such a crossing, which approval shall not be unreasonably withheld, provided the Grantor agrees to the terms and specifications of Grantee. Should the weight loads proposed by Grantor require a crossing method other than matting or logs, Grantee, at its cost, shall pay for the cost of engineering and construction of the crossing to Grantee's specifications.
8. **Pipeline Depth and Field Tiles:** All pipelines which Constitution Pipeline Company, LLC, Grantee, may place on cultivated land shall be buried so that the top of the pipeline is at least forty-eight (48) inches below the surface of the ground. In the event the pipeline intersects with field tiles of Grantor, Constitution Pipeline Company, LLC shall install the pipeline below the Grantor's existing field tiles.

Page 1 of 2

BOOK 967 PAGE 174

S-914

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Notwithstanding the foregoing, in no event will Grantee be required to install a pipeline deeper than forty-eight (48) inches below the surface of the ground.

9. **Topsoil Salvage and Restoration:** Grantee shall use its best efforts to stockpile, save, replace, grade and reseed any/all topsoil disturbed by its operations, in accordance with applicable permits in agricultural areas. During restoration, in accordance with applicable permits, Grantee shall use its best efforts to prevent undue compaction of the disturbed area. If necessary Grantee will use scraping/tilling/raking the backfill in the disturbed area with a ripper claw or similar device prior to spreading and grading the topsoil which it salvaged.
10. **Timber Compensation and Stacking:** Any requested timber will be cut and placed at a reasonable location adjacent to the Easement Area when timber clearing starts. This placement will be on the Grantor's property only. Location to be mutually agreed upon by Grantor and Grantee. Grantee will compensate Grantor for the reasonable market value of any marketable timber removed from the Easement Area.
11. **Temporary Fencing:** Upon Grantor's written request, Grantee shall, at Grantee's sole cost and expense, design and install temporary fencing for the protection of livestock during construction activities.

Page 2 of 2


BOOK 967 PAGE 175

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd



Schoharie County Clerk
284 Main Street, PO Box 549
Schoharie, NY 12157

EXHIBIT
F

Return to:
DOYLE LAND SERVICING
CONSTITUTION PIPELINE COMPANY LLC
296 MORRIS ROAD 2ND FLOOR
SCHENECTADY NY 12303

Instrument **Deed, Right of Way**

Document Number: 654998 **Book:** 967 **Page:** 149 **Town:** Richmondville

Grantor
LODER, HAROLD J JR
LODER, JAMES E

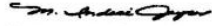
Grantee
CONSTITUTION PIPELINE COMPANY LLC

Number of Pages: 9
Amount: \$6500.00

Recorded Date/Time: 12/27/2013 at 10:01 AM

Receipt Number: 118502

Note: ** DO NOT REMOVE - THIS PAGE IS PART OF THE DOCUMENT **
THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &
319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.


M Indica Jaycox, County Clerk

BOOK 967 PAGE 149

Transfer Tax Receipt
Schoharie County Clerk Received
Trans Tax #: 586
..... \$26.00

Companies and Organizations Comments

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Record and Return to:
Doyle Land Services, Inc. in service to
Constitution Pipeline Company, LLC
296 Morris Road, 2nd Floor
Schenectady, NY 12303

Schoharie County Clerk
Document Number 654798
Rcvd 12/27/2013 10:01:53 AM

Line # CPL
R/W # ALT-L-NY-SC-010.000
Parcel # 101.-1-7.1
Municipality: RICHMONDVILLE
County: Schoharie
State: New York

RIGHT OF WAY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, HAROLD J. LODER, JR. and JAMES E. LODER, as tenants in common, 142 Hickory Hill Road, Richmondville, NY 12149 (hereinafter called GRANTOR, whether one or more), for and in consideration of the sum of Ten Dollars and 0/100 and other good and valuable consideration (\$10.00) cash in hand paid, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto CONSTITUTION PIPELINE COMPANY, LLC, a Delaware limited liability company whose address is 2800 Post Oak Boulevard, Houston, TX 77058-6106, its successors and assigns, (hereinafter called GRANTEE), a right of way and easement as shown on the attached drawing(s) marked "Exhibit A," for the purposes of laying, constructing, maintaining, operating, repairing, altering, replacing, changing the size of, and removing a pipeline (with valves, regulators, meters, fittings, appliances, tie-overs, and appurtenant facilities) for the transportation of gas, oil, petroleum products, or any other liquids, gases, or substances which can be transported through pipelines, under, upon, over, through and across the lands of Grantor, situated in the County of Schoharie, State of New York described as follows:

A certain tract or parcel of land located in the Town of Richmondville, containing 98.00 acres, more or less, and being more particularly described in that certain Warranty Deed with Lien Covenant from Harold J. Loder, Sr., Harold J. Loder, Jr. and James E. Loder to Harold J. Loder, Jr. and James E. Loder recorded with the Schoharie County Clerk on February 6, 2006 at Deed Book 804, Page 315, of the public records of Schoharie County, State of New York.

Parcel ID #: 101.-1-7.1

Page 1 of 5

BOOK 967 PAGE 150

S-917

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

The permanent right of way and easement shall be a strip of land identified as "Permanent Right of Way", all as shown on the drawing(s) marked "Exhibit A" attached hereto and made a part hereof.

During the course of construction of the first of the pipelines, facilities or improvements authorized above, Grantee shall have the right to enter upon, clear off, and use an additional strip (or strips) of land contiguous to the right of way described above, such strip (or strips) of land being identified on the attached "Exhibit A" as "Temporary Work Space."

Grantor acknowledges that part of the consideration herein paid includes payment in full for any damages caused, or to be caused, by the construction of the first pipeline, facilities or improvements hereunder.

The Grantee shall have all other rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free and full right of ingress and egress over and across said lands and other lands of the Grantor to and from said right of way and easement, and the right, from time to time as it may find convenient, to cut or remove all trees, undergrowth and other obstructions from the permanent right of way.

The Grantor will not build any permanent structures on said permanent right of way or any part thereof, will not change the grade of said permanent right of way, or any part thereof, will not plant trees on said permanent right of way, or any part thereof, or use said permanent right of way or any part thereof for a road, or use said permanent right of way or any part thereof in such a way as to interfere with Grantee's immediate and unimpeded access to said permanent right of way, or otherwise interfere with Grantee's lawful exercise of any of the rights herein granted without first having obtained Grantee's approval in writing; and Grantor will not permit others to do any of said acts without first having obtained Grantee's approval in writing. No forbearance by Grantee to cut and remove any trees, undergrowth or other obstructions from the permanent right of way or to exercise any other right provided by Grantee hereunder for any period of time shall constitute a waiver of such right or limit Grantee's ability to exercise such right as it may find convenient.

This Right of Way Agreement and any and all rights of Grantee hereunder shall be freely assignable by Grantee, without the consent or approval of Grantor, and, if assigned by Grantee, any and all acts performable by Grantee hereunder may be performed by its assignee. Any assignment by Grantee, and its successors or assigns, of all of its or their respective rights hereunder shall completely relieve the assignor of any further duties, liabilities or obligations hereunder that accrue or arise from and after the effective date of such assignment, but not before.

TO HAVE AND TO HOLD said right of way and easement unto said Grantee, its successors and assigns, until such first pipeline be constructed and so long thereafter

Page 2 of 5

BOOK 967 PAGE 151

S-918

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

as a pipeline is maintained thereon; and the undersigned hereby bind themselves, their heirs, executors and administrators (and successors and assigns) to warrant and forever defend all and singular said premises unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Grantor shall not change the grade on the right of way nor place or construct upon the right of way any buildings, trees, structural improvements or other encroachments without the express written permission of the Grantee.

The Grantee agrees to bury all pipelines so that they will not interfere with the cultivation of crops (not trees) on the land, and also to pay for any actual physical damages to fences, growing crops and timber which may arise from laying, constructing, altering, repairing, removing, changing the size of and replacing such pipelines. The term "timber" is defined as trees or the wood grown for commercial sale.

Grantee, by the acceptance hereof, covenants and agrees:

- (a) Except for the damages caused by the construction of the first pipeline, facilities or improvements authorized hereunder, Grantee will reimburse the Grantor for any loss or damage to property which Grantor may suffer as a consequence of the laying, constructing, altering, repairing, removing, changing the size of, or replacing any pipelines, facilities or improvements, in the exercise of its rights granted, except that neither the Grantor nor any person or firms holding under the Grantor shall assert any claims for severance or consequential damages.
- (b) It will defend and save harmless the Grantor from any claims or suits which may be asserted against the Grantor arising out of any negligent acts of the Grantee, its agents or employees, in its exercise of the rights herein granted.

See Exhibit "B" attached hereto for additional provisions to this agreement. In the event of a conflict between this agreement and Exhibit "B", the provisions of Exhibit "B" shall prevail.

It is agreed that this grant covers all the agreements between the parties as to the grant of the easements herein and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of this agreement.

Page 3 of 5

BOOK 967 PAGE 152

S-1916

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

IN TESTIMONY WHEREOF, the Grantor(s) has/have hereunto set her/his/their
hand(s) and seal(s) this 20th day of December, 2013.

X [Signature] **Sechara VanValkenburg**
Notary Public
Schoharie County, New York
Reg'd 01VA0138863
My term expires 12/27/2017

HAROLD J. LODER, JR.

X [Signature] (SEAL)
JAMES E. LODER

Sechara VanValkenburg
Notary Public
Schoharie County, New York
Reg'd 01VA0138863
My term expires 12/27/2017

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Page 4 of 5

BOOK **967** PAGE **153**

S-920

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

STATE OF New York)
) ss.:
COUNTY OF Schoharie)

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared HAROLD J. LODER, JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara Van Valkenburg
Notary Public

Barbara Van Valkenburg
Notary Public
Schoharie County, New York
Reg# 81VA8138863
My term expires 12/27/2017

STATE OF New York)
) ss.:
COUNTY OF Schoharie)

On the 20th day of December in the year 2013 before me, the undersigned, personally appeared JAMES E. LODER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbara Van Valkenburg
Notary Public

Barbara Van Valkenburg
Notary Public
Schoharie County, New York
Reg# 81VA8138863
My term expires 12/27/2017

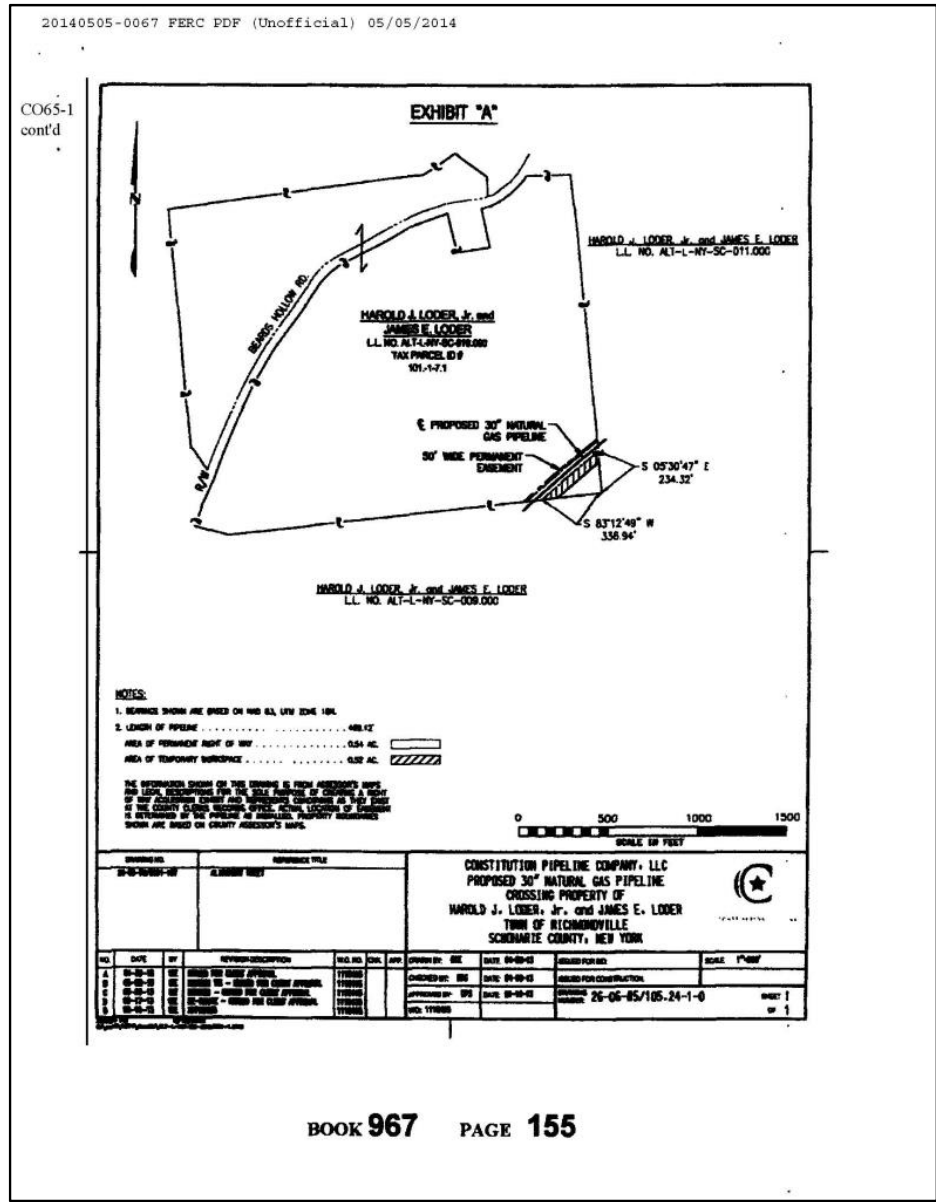
Page 5 of 5

BOOK 967 PAGE 154

S-921

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)



COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

EXHIBIT "B"

Exhibit "B" is attached hereto and made part of that certain Right of Way Agreement between Harold J. Loder, Jr. and James E. Loder, as tenants in common, Grantor, and Constitution Pipeline Company, LLC, a Delaware limited liability company, Grantee. The Permanent Right of Way and Temporary Work Space granted under that Agreement shall be referred to herein as the "Easement Area."

1. **Pipeline Limitation:** Not more than one (1) pipeline shall be laid under the terms and provisions of this instrument.
2. **Agency Clause:** All monies coming due under the terms of this Right Of Way Agreement shall be made payable to James E. Loder, 655 Beards Hollow Road, Richmondville, NY 12149, (50%) and Harold J. Loder, Jr., 142 Hickory Hill Road, Richmondville, NY 12149, (50%).
3. **Fences:** All fences of Grantor cut by Grantee during construction of said pipelines shall be repaired by Grantee at Grantee's sole expense.
4. **Livestock Crossing:** During construction, Grantee agrees that it will maintain mutually agreed upon ditch crossovers to allow livestock to have access to water and/or feed.
5. **Rock Removal:** If required by applicable permits, in actively cultivated lands and residential areas, rocks greater than four inches (4") in any dimension will be removed from the surface of the soil.
6. **Road Restoration:** Upon completion of the installation of the pipeline, Grantee agrees that any and all damages to private roads on Grantor's property resulting from Grantee's operation will be repaired and restored to as near original condition as possible. Should Grantor require access across the pipeline while under construction, Grantee shall provide a temporary crossing suitable for Grantor's vehicles within forty-eight (48) hours notice.
7. **Right of Way Crossing:** The Grantor may have the right to build a road across the Permanent Right of Way or some part thereof. Grantor must obtain Grantee's approval in writing for such a crossing, which approval shall not be unreasonably withheld, provided the Grantor agrees to the terms and specifications of Grantee. Should the weight loads proposed by Grantor require a crossing method other than matting or logs, Grantee, at its cost, shall pay for the cost of engineering and construction of the crossing to Grantee's specifications.
8. **Pipeline Depth and Field Tiles:** All pipelines which Constitution Pipeline Company, LLC, Grantee, may place on cultivated land shall be buried so that the top of the pipeline is at least forty-eight (48) inches below the surface of the ground. In the event the pipeline intersects with field tiles of Grantor, Constitution Pipeline Company, LLC shall install the pipeline below the Grantor's existing field tiles.

Page 1 of 2

BOOK 967 PAGE 156

S-923

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Notwithstanding the foregoing, in no event will Grantee be required to install a pipeline deeper than forty-eight (48) inches below the surface of the ground.

9. **Topsoil Salvage and Restoration:** Grantee shall use its best efforts to stockpile, save, replace, grade and reseed any/all topsoil disturbed by its operations, in accordance with applicable permits in agricultural areas. During restoration, in accordance with applicable permits, Grantee shall use its best efforts to prevent undue compaction of the disturbed area. If necessary Grantee will use scraping/tilling/raking the backfill in the disturbed area with a ripper claw or similar device prior to spreading and grading the topsoil which it salvaged.
10. **Timber Compensation and Stacking:** Any requested timber will be cut and placed at a reasonable location adjacent to the Easement Area when timber clearing starts. This placement will be on the Grantor's property only. Location to be mutually agreed upon by Grantor and Grantee. Grantee will compensate Grantor for the reasonable market value of any marketable timber removed from the Easement Area.
11. **Temporary Fencing:** Upon Grantor's written request, Grantee shall, at Grantee's sole cost and expense, design and install temporary fencing for the protection of livestock during construction activities.

Page 2 of 2

BOOK 967 PAGE 157

S-924

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014



CO65-1
cont'd



PO Box 193
Richmondville, NY 12149

July 24, 2013

Richard Lape
Supervisor, Town of Richmondville
PO Box 555
Richmondville, NY 12149

Mr. Lape:

A review of recent Town of Richmondville Planning Board minutes indicates a significant disconnect between statements made by Planning Board Members/Codes Enforcement Officer and the requirements of local zoning regulations, as they relate to a preliminary proposal by Constitution Pipeline to site a staging area on property owned by Lancaster Development along Route 7.

Despite apparent efforts by the Planning Board Secretary to correct misstatements, the minutes indicate that Planning Board members demonstrated little understanding of, and willingness to apply, the requirements of local regulations when considering this proposal. It would appear that the Planning Board and/or the Codes Enforcement Officer are poised to approve the staging area and/or the issuance of a temporary permit for its operation. Neither action would be consistent with applicable regulations and would invite legal challenge.

The proposal to site a large scale construction staging area on a former agricultural property in order to facilitate the construction of a pipeline formally opposed by the Town of Richmondville is of grave concern to residents of the Town and the broader community. The approval of such an operation with disregard of applicable requirements would underscore a lack of due diligence, raise multiple questions about the integrity of the planning and zoning process and the impartiality of those involved, and be absolutely unacceptable to the residents of Richmondville.

S-925

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

We therefore request that the Town Board direct the Town Attorney to advise the Planning Board as to their obligations to follow local and State laws and to assist them with the interpretation of those requirements as it relates to the proposal. In its role as a public resource, The Center for Sustainable Rural Communities, a non-profit NY corporation, is also willing to provide subject matter experts, if necessary, to assist the Planning Board to ensure applicable regulations are appropriately considered and applied.

Please be advised that in the event that the pipeline staging area is approved and/or issued permits in a manner that is inconsistent with local and State law the Center for Sustainable Rural Communities is committed to challenging such a decision utilizing all avenues, mechanisms and resources available to the organization.

Respectfully submitted,

Robert Nied
Board of Directors
Center for Sustainable Rural Communities

Cc:
Town Board Members
Planning Board Secretary
Codes Enforcement Officer

S-926


COMPANIES AND ORGANIZATIONS


CO65 – Center for Sustainable Rural Communities (cont'd)

S-927

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd


Schoharie County Clerk
284 Main Street, PO Box 549
Schoharie, NY 12157



Return to:
PETER MAUHS ESQ
PO BOX 129 105 UNION ST
COBLESKILL, NY 12043

Instrument **Deed**

Document Number: 638180 **Book:** 942 **Page:** 1 **Town:** Richmondville

Grantor
LODER, HAROLD J


Grantee
LODER, HAROLD J JR
LODER, JAMES E

Number of Pages: 5 **Transfer Tax Receipt**
Amount \$120000.00 **Schoharie County Clerk Received:**
Recorded Date/Time 10/09/2012 at 12:28 PM **Trans Tax #** 228
.....\$480.00

Receipt Number 108907

Note: ** DO NOT REMOVE - THIS PAGE IS PART OF THE DOCUMENT **

THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &
319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.


M Indica Jaycox, County Clerk

BOOK 942 PAGE 1

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

Schoharie County Clerk
Document Number 638160
Filed 10/09/2012 12:28:36 PM

WARRANTY DEED

CO65-1
cont'd

THIS INDENTURE, made the 9 day of October, Two Thousand Twelve.

BETWEEN

HAROLD J. LODER, of 608 Beards Hollow Road, Richmondville, New York 12149,

Party of the first part,

And

HAROLD J. LODER, JR. of 142 Hickory Hill Road, Richmondville, New York 12149 and JAMES E. LODER of 655 Beards Hollow Road, Richmondville, New York 12149, as tenants in common,

Parties of the second part,

WITNESSETH, that the Party of the first part, in consideration of ONE DOLLAR (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the Parties of the second part, does hereby grant and release unto the Parties of the second part, their heirs and assigns forever,

MAIN FARM and SCHOOL HOUSE PROPERTY:

PREMISES NO. 1:

PARCEL NO. 1 All that certain lot or parcel of land situate, lying and being in the Town of Richmondville, County of Schoharie, and State of New York, and being a part of Lot No. 1 in Franklin's Patent and bounded as follows: beginning 13 feet west of a stake in the center of the highway which is the corner of a lot of land owned and occupied by Gilbert M. Dox (formerly), and runs from thence North 11 degrees West 5 chains to a stone; thence North 79 degrees East 2 chains to a stone; thence South 11 degrees East 5 chains to a stone in the center of the highway, thence South 79 degrees West 2 chains to the place of beginning, CONTAINING ONE ACRE OF LAND.

PARCEL NO. 2 Also another piece and parcel of land lying and being in the aforesaid place and of the aforesaid Patent and bounded as follows: Beginning at a stone in the ground on the Southeast corner of the above described premises and runs from thence along the East bounds of the aforesaid lot North 11 degrees West 5 chains and 47 links to a stone; thence North 75 1/4 degrees East 3 chains 20 links to a stone; thence South 46 degrees East 6 chains 28 links to a stone in the center of the highway; thence South 75 degrees West along the center of the highway 6 chains 83 links to the place of beginning, CONTAINING TWO ACRES TWO RODS AND THIRTY-FOUR RODS OF LAND.

PARCEL NO. 3 Also another piece or parcel of land adjoining the north west end of the first described lot being 47 links wide and two chains long, CONTAINING 15 RODS OF LAND.

PARCEL NO. 4 Also another piece or parcel of land partially adjoining the aforesaid lots and of the same Patent and bounded as follows: Beginning at a stone in the ground at the Southwest corner of lands of John E. Slater (formerly) and on the West side of the creek, and runs from thence South 70 degrees West 15 chains 30 links along the lands of the above described lots and lands of George H. Mann to a stake; from thence North 9 degrees West 5 chains 10 links along the lands of George H. Mann to the center of the creek; thence along the center of the creek North 46 degrees 15 minutes East 8 chains 50 links; thence along the center of the creek North 64 degrees East 4 chains 30 links; thence along the center north of the creek 17 degrees East 5 chains to the junction of the creeks; from thence South 27 degrees 15 minutes East 4 chains along the creek that runs past Gilbert M. Dox's thence South 3 degrees 30 minutes East 2 chains 50 links thence along the center of the East branch of the Creek South 11 degrees West 4 chains 50 links; thence South 59 degrees 15 minutes East 3 chains 30 links, thence along the center of the creek South 21 degrees West 60 links to a maple tree; thence South 21 degrees 30 minutes East 1 chain 60 links to the place of beginning, CONTAINING THIRTEEN ACRES AND TWENTY-ONE RODS OF LAND, be the same more or less.

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

PREMISES NO. 2

All that parcel of land situate in the Town of Richmondville, County of Schoharie, State of New York, bounded and particularly described as follows, to wit: Beginning at a stake and stones 4 rods from the Patent line on the division line of the tier of lots in Franklin's Patent in the town of Richmondville and Summit and running North 77 degrees 30 minutes east along the said division line to the corner of lot No. 28 in Franklin's Patent 22 chains 29 links to a stake; thence south 12 degrees 30 minutes east 44 chains to a stake and stones on the line dividing the lots 28 and 29 in the Patent aforesaid; thence south 77 degrees west 33 chains 57 links to a stake and stones; thence north 44 minutes west to the place of beginning - CONTAINING 100 ACRES OF LAND being the same more or less. EXCEPTING AND RESERVING out of the above described premises the lands that have been sold and conveyed by deed to George H. Mann, Luther Dax, Gilbert M. Dax, and Levi Becker.

PREMISES NO. 3

PARCEL NO. 1 - All that certain piece or parcel of land situate, lying and being in the Town of Richmondville, County of Schoharie, and State of New York, bounded and described as follows: Beginning on the north side of the road leading from Beards Hollow to Summit, running along the line of Lot No. One and the private road (formerly) of Peter H. Mann, eleven rods and ten feet; from thence on an Easterly course nine rods and five feet to the Summit Road and thence along said road eleven rods and ten feet to the place of beginning. CONTAINING ONE-HALF OF AN ACRE OR LAND, be the same more or less.

PARCEL NO. 2 - Together with another piece or parcel of land, situate, lying and being in the same place aforesaid in Franklin's Patent and being a part of Lot No. One and bounded as follows: Beginning at a stone in the ground on the North side of the aforesaid road and on the Southwest corner of the aforesaid lot and runs from thence South 52 degrees West 2 chains and 42 links to a stone; thence South 63 degrees and 15 minutes West 1 chain and 54 links to a stone; thence North 46 degrees and 30 minutes West 5 chains and 85 links to a stone; thence South 75 degrees West 2 chains and 50 links to a stone, thence North 22 degrees and 15 minutes West 1 chain and 56 links to a small maple tree; thence North 19 degrees 30 minutes East 1 chain and 59 links to a birch tree, thence North 65 degrees and 15 minutes East 9 chains and 32 links to stone on the West line of the farm of Panny Mann (formerly); thence South 11 degrees East 8 chains and 10 links to the place of beginning. CONTAINING FIVE ACRES THREE RODS AND TWENTY-THREE RODS OF LAND. Forever EXCEPTING AND RESERVING one-eighth of an acre of land as deeded to District No. 9 of the Town of Richmondville and on which the school house now stands.

SAID PREMISES BEING all and the same lands conveyed by David J. Bice and Elde Bice, his wife, to Harold E. Loder and Harold J. Loder, as joint tenants with right of survivorship and not as tenants in common, by deed dated August 31st, 1954 and recorded in the Schoharie County Clerk's Office September 7, 1954, in Liber 270 of Deeds at Page 258.

THE PROPERTY BEING CONVEYED HEREIN IS SITUATE IN THE TOWN OF RICHMONDVILLE, and is a portion of the premises described in a deed from Harold E. Loder to Harold J. Loder dated January 3, 1973 and recorded in the Schoharie County Clerk's Office on January 18, 1973 in Book 361 of Deeds at Page 160.

The MAIN FARM consists of 55.50± acres and is identified as Tax Map Parcel 101-6-3. The SCHOOL HOUSE PROPERTY consists of 20.26± acres and is identified as Tax Map Parcel 91-1-11.

EXCEPTING AND RESERVING TO THE GRANTOR HEREIN, a piece or parcel of land containing 6.148± acres with improvements, bounded and described as follows:

All that certain piece or parcel of land situate, lying and being in the Town of Richmondville, County of Schoharie, State of New York, bounded and described as follows:

Beginning at an iron pin set in the southerly bounds of Beards Hollow Road, said point being 25' perpendicular from the centerline thereof, said point also being the northwest corner of lands herein described and the north corner of remaining lands of Harold J. Loder (361-160) and a corner of lands of Harold J. Loder (374-245), running thence along the southerly bounds of Beards Hollow Road,

N 56-13-24 E, 69.35' to an angle point

- 2 -

BOOK 942 PAGE 3

S-929

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

CO65-1 cont'd	<p>20140505-0067 FERC PDF (Unofficial) 05/05/2014</p> <p>N 61-53-43 E, 41.21' to an angle point, N 66-27-57 E, 44.40' to an angle point, N 75-57-26 E, 44.91' to an angle point, N 82-45-39 E, 51.21' to an iron pin set in the northeast corner of lands herein described and a corner of remaining lands of Harold J. Loder (361-160), running thence along remaining lands of Loder,</p> <p>S 25-04-12 E, 994.68' to an iron pin set in the southeast corner of lands herein described, continuing along remaining lands of Loder,</p> <p>S 73-53-35 W, 373.21' to an iron pin set in the southwest corner of lands herein described and a point in the east line of lands of Harold J. Loder (374-245), running thence along lands of Loder and along remaining lands of Harold J. Loder (361-160),</p> <p>N 12-27-00 W, 825.00' to a crabapple tree witnessed by an iron pin set at an angle point,</p> <p>N 47-08-55 W, 155.66' to the point or place of beginning, containing 6.148 acres of land as computed from a survey run in the field during January, 2006 by Richard T. Lape, L.S., P.C.</p> <p>Intending to convey any and all rights and privileges to the centerline of Beards Hollow Road.</p> <p>Excepting and reserving any and all rights and privileges granted to utility companies.</p> <p>Said exception being a portion of the premises conveyed from Harold E. Loder to Harold J. Loder by deed dated January 3, 1973 and recorded in the Schoharie County Clerk's Office on January 18, 1973 in Book 361 of Deeds at Page 160. Said parcel to be conveyed from Harold J. Loder to Harold J. Loder, Sr. and A. Marie Loder on even date herewith, pursuant to a Land Contract between Harold J. Loder and A. Marie Loder and James Loder and Harold J. Loder, Jr., dated July 29, 1994.</p> <p>A Survey Map titled "A SURVEY FOR HAROLD J., SR. & MARIE LODER", dated January 25, 2006, was filed in the Schoharie County Clerk's Office on May 12, 2006, Map No. 4808.</p> <p>UPPER FARM</p> <p>All that piece or parcel of land situate in the Town of Richmondville, County of Schoharie and State of New York, bounded and described as follows: The first piece being a part of lot No. 18 in Skinner's Patent and bounded as follows: Beginning at a stone in the ground on the north-east corner of lot of land owned and occupied by Peter Becker and runs from thence N. 80 1/2° E. 19 chains, 45 links to a stake on the west line of a lot of land owned by David Dax; thence south 1° west along the west line of said Dax 16 chs 40 lks to a stone; thence south 57 3/4° W. 1 chain 84 lks to a stone, thence N. 88 3/4° W, 17 chs 78 lks to a stone, thence N. 1° E. 13 chs 90 lks to the place of beginning containing 30 acres of land.</p> <p>The second piece bounded as follows: beginning at south east corner of Conrad Kilts land running North 3 1/4° east 27 chains 59 lks; thence north 54 1/4° east 3 chs, 83 lks; thence south 12 1/2° east 33 chs. 25 lks; thence north 77 1/2° west 12 chs to the place of beginning, containing 22 acres 36 rods of land as surveyed by I. Mann.</p> <p>The third piece bounded as follows: is known as lot No. 18 in the first allotment of Skinner's Patent containing agreeable to the map, one hundred and twenty-two acres of land, conveying however, thirty-two acres to be taken off from the north east side of said lot and running along the Patent line, said part conveyed is to be taken off of the North east side of said lot and running parallel with the Patent line.</p> <p>EXCEPTING, however, one acre of land, more or less, conveyed by Martines B. and Grace H. Mattice to George and Edith S. Radt by deed recorded in the Schoharie County Clerk's Office in Book 240 of Deeds at Page 519.</p> <p>ALSO All that certain lot, piece or parcel of land being and lying in the Town of Richmondville, County of Schoharie and State of New York bounded generally as follows: East by the lands of David Bice; south by the Town Road leading to the Harold Lape farm and by the lands of Harold Lape; West by Harold E. Loder; and North by Martines B. Mattice (formerly Peck farm, one of the parcels described above in this deed) containing twenty acres of land, more or less, and being a portion of the lands conveyed by John E. Moore to George H. Mann by Warranty Deed dated June 15th, 1867, recorded Book 51 of deeds, page</p> <p>- 3 -</p> <p>BOOK 942 PAGE 4</p>
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S-930

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

431. The remaining part of said parcel having been conveyed to Clarence and Katherine Johns by Deed recorded Book 261 of Deeds, Page 421.

The above described parcels of land being all and the same premises as were conveyed by Martine B. Mattoce and Grace H. Mattoce, his wife, to Harold E. Loder and Harold J. Loder, as joint tenants, and not as tenants in common, by deed dated March 18, 1952 and recorded in Schoharie County Clerk's Office April 5, 1952 in Liber 263 of Deeds, at Page 519.

Being the same premises conveyed from Harold E. Loder to Harold J. Loder by deed dated November 17, 1976 and recorded in the Schoharie County Clerk's Office on November 18, 1976 in Book 374 of Deeds at Page 245.

The UPPER FARM consists of 91.50± acres and is identified as Tax Map Parcel 90-3-11.

TOGETHER with the appurtenances and all the estate and rights of the Party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Parties of the second part, their heirs and assigns forever.

AND the Party of the first part covenants as follows:


First, that the Parties of the second part shall quietly enjoy the premises;

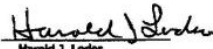
Second, that the said Party of the first part will forever Warrant the title to said premises;

Third, that in compliance with Section 13 of the Lien Law, the Party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the Party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF


Notary Public - State of New York
Commission Expires: 11/30/13.


Harold J. Loder

STATE OF NEW YORK
COUNTY OF SCHOHARIE

SS.:
On the 9th day of October, in the year 2012, before me, the undersigned, personally appeared HAROLD J. LODER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

- 4 -

BOOK 942 PAGE 5

S-931

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014



June 11, 2013
Village Municipal Building

CO65-1
cont'd

7:00--**Call to Order--Chairman Harold Loder** called the Planning Board's regular monthly meeting to order.

Roll Call & Pledge to Flag--Present: Chairman Harold Loder, Board members--Bob Reed, Tighe Lory, Mike Piccolo and Bill Lape, Planning Board Secretary--Maggie Smith. **Others Present:** Gene DiMarco (CEO), Mark McMahon (7:10 arrived).

7:01--**Approval of the Minutes--Mike Piccolo** made a motion to approve the May 14, 2013 minutes as presented, Tighe Lory seconded; 5-0.

7:02--**Modification to All American Redemption Site Plan--The secretary** stated last Thursday she went to Mark McMahon's place of business looking for him because he hadn't submitted his modified site plan. The phone number on his letterhead wasn't good and the clock was running out. She got a number from his worker, called him and asked if he'd forgotten about his paperwork. He said he had, but would bring it in. On Friday she scanned it over (county doesn't like that) to Zach Thompson before she left for a dentist appointment, because the County Planning Commission's (CPC) was meeting on June 3, 2013. Zach sent an email back on Friday stating there was no SEQRA done. She was already on the road and asked if he could help her out and he brought the applicant part of the SEQRA to Mark to complete before it was seen by CPC. The Planning Board reviewed the project, Harold Loder had to recuse himself and a motion was made that it had countywide impact. It was defeated in a split vote of 5-5. They didn't call it a local concern either, because the vote was tied for countywide impact. She asked Harold if that was right? **Harold Loder** stated there wasn't much discussion on it or concern. **The secretary** stated half of the members voted for it being a concern. **Discussion** that there is propane dispensing at Reinhardt and in the Village of Cobleskill. Today, she received notification from the Department of Transportation (D.O.T.) which stated they had no concern with the propane dispensing station, but expressed concern that Mr. McMahon had not yet closed one of the driveways he'd been instructed by them to close in January 2012 when his original site plan was submitted. She felt Mark should know what the letter said, so he could go speak with D.O.T., about it before tonight's meeting as the Planning Board can't approve something with D.O.T., citing a failure to comply with an earlier mandate. **Gene DiMarco, CEO** stated D.O.T., has no business sticking their nose in there, it's a residence and needs access for ambulance and fire trucks. **Bill Lape** stated there's no good reason to close the driveway. **The secretary** stated the property is on State Route 7 and every project that goes to CPC on a state highway has to go to D.O.T. also. **Gene D.** stated it's an existing place. **The secretary** stated the law says they get to have input. **Bob Reed** asked what the rationale is for them closing one of the driveways? **The secretary** reviewed that in 2012 when Mark M. submitted his original site plan D.O.T., stated laws had changed since the inception of Buhrmaster. He was asking for a new use and the trailer wasn't residential at that time, it was Buhrmaster's office. This board discussed whether it could be a residence again and the board said no not until (interrupted). **Gene D.** stated he thought they said it could be residential? **Mike Piccolo** stated they said it could be, if it was inspected and certified. **The secretary** stated she didn't think that had been done and asked Gene if it had gone through the certification process? **Gene D.** stated no. **Bob Reed** stated someone is living there. **Gene D.** stated he (Mark) never called him and he didn't know he'd transferred it over. **Harold L.** stated Mark can talk with D.O. T., about it. **Gene D.** stated he's going to tell D.O.T., he doesn't want the driveway out, it's needed for emergency vehicles. **Harold L.** stated he didn't see the logic in taking it out. **Mike P.** stated one of the classes they were at D.O.T., said they can not legally deny anyone access and he would argue with Ron Pacatte (at D.O.T.). **The secretary** stated that's what she was saying to Mark, that they need to have something in writing. **Harold L.** stated come on in Mark (Mark McMahon arrived at meeting), we're just discussing the issue. **Bill Lape** asked if they can approve it?

S-932

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Mike P. stated not until D.O.T., says differently. **Gene D.** asked why can D.O.T., have anything to do with that business? They can say about his driveway, but not stopping the guy from doing business. **Bill L.** stated that's his argument too. They're going to hang this over his head until he removes the driveway? **Harold L.** stated it's two different issues. **The secretary** stated she believes that when Mr. McMahon's modified site plan came back into D.O.T.'s office, they reviewed the file and saw in January of 2012 they asked him to close the driveway. They then sent out an inspector and saw he had not complied. **Bill L.** asked if Mark had fought with D.O.T.? **Mark McMahon** stated when he came to the board about making the trailer residential, he was told the driveway has to be with the residence. **Mike P.** asked if they realize the trailer is residential? **The secretary** stated it was not residential in 2012. **Gene D.** stated there is nothing in the law that says he can't convert it back into residential. **The secretary** stated D.O.T., only knows it was once Burmaster which was closed for several years and then came the redemption proposal. D.O.T., back then stated NYS Highway law did not allow for three driveways for one business which she believes is their point of view. They haven't been notified that the trailer is a residence. She was trying to explain to Mr. McMahon this afternoon that he needed to go have a conversation with them and explain it's residential and not feasible. **Mark M.** stated he has, so where do they go from here? **The secretary** asked if they wrote him a letter agreeing that the driveway could remain? **Mark M.** stated Rob Pacatte agreed that closing the west end driveway was ridiculous and he closed the east end driveway. When he came to them about making the trailer residential, the first remark was the trailer needed it's own entrance. Now he's at a loss. **Gene D.** stated it's two different entities. **The secretary** stated but D.O.T., only knows it as one business piece of property. **Mark M.** stated why would they combine a commercial and residential entrance. He's been there over a year with no problem, why should he mess with it. **Tighe L.** stated doesn't see any reason. **Mike P.** stated Gene should speak with D.O. T. **Mark M.** stated he tried to speak with, Rich Cooper, the Cobleskill Fire Chief and couldn't get a letter. **The secretary** stated she spoke with Mr. Cooper today and he is fine with it and will be sending a letter of no concern with the propane dispensing facility. **Gene D.** stated everything is approved, the county says it's OK. **The secretary** stated they didn't approve it, it defaulted to local concern because the tied vote for countywide concern. **Gene D.** stated right. Do they have the right to stop this board from doing it? **Mike P.** stated D.O.T., can't stop someone from access to their property. **Bill L.** stated and they can't stop the business either. **The secretary** stated she thinks the board's giving D.O.T., a bad rap because they don't know it's a residence, the residence aspect never came in front of them. **Bob Reed** stated it's just a communication issue. **Gene D.** stated he'll call D.O.T., tomorrow. **The secretary** stated this is an issue of them needing to have their i's dotted and t's crossed with their paperwork. She keeps being made out as the bad guy. Mr. McMahon's project would not even have been seen by the county if she hadn't tracked him down. **Mark M.** stated absolutely. **The secretary** stated and it's not her project, but she went out of her way to help him. **Mark M.** stated yes she did. **The secretary** stated she called him today to let him know something important had come in from D.O.T., and he said he was going to do it anyway. He then hung up on her. **Mark M.** stated he did and that was probably wrong. **Harold L.** stated being on the CPC is a different perspective. They have towns in the county that never have anything go before the CPC. **Mark M.** stated he didn't know he had to do another SEQRA. **The secretary** stated that was on the board. **Bill L.** stated neither did we. **The secretary** stated yes they did. Whenever there is approval of a permit it's required and they were modifying a permit. **The secretary** stated she is always more than willing to help people get through the process, but they have laws they need to follow and if they don't they have a problem. They have to have their paperwork in order and it has to be a fair procedure for all. **Gene D.** stated he doesn't like that they're all in agreement and D.O.T., says no they can't. **The secretary** stated D.O.T.'s letter stated no they had no problem with the propane dispensing, he was red flagged because he didn't comply with driveway. **Mark M.** stated he can't move a driveway, it belongs to Burmaster not him. **Gene D.** stated why did she (the secretary) tell him today that if Mark started doing propane he would be in violation? **The secretary** stated because before Mr. McMahon hung up on her he said he's going to call Amerigas, get the equipment and start dispensing propane. She told

S-933

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd him not to do that because the board's approval hinged upon the county and fire chief's letter. County approval includes D.O.T., who is part of the referral to the county. **Tighe L.** stated the letter says they don't have concerns with the propane, the driveway is separate thing. **Discussion** they have to come to an agreement with D.O.T.. **Mark M.** stated he doesn't want his commercial driveway conflicting with his residential driveway. Everything's been working well. **Harold L.** stated there have been many compliments at the county level that it's a good service and they're looking forward to the propane. **Bob Reed** asked if they needed to make a motion to approve? **Bill Lape** stated no they made a motion last month they approved it after input from CPC and Cobleskill Fire Chief. **The secretary** stated with conditions. **Mike P.** stated the trailer needed to be certified and asked what kind of heat was in the trailer? **Mark M.** stated an oil furnace. **Mike P.** stated it needs a carbon monoxide alarm and Gene needs to look at the wiring in the trailer which needs to be copper wiring. **Bill Lape** stated he was good to go.

Modified Site Plan for All American Redemption SEQRA—**The secretary** stated they needed to complete the short form SEQRA, she read the questions all responses were no. **Mike P.** stated D.O.T., is not concerned with the propane and Gene is going to address D.O.T.'s concern with the driveway letting them know it's residential and it needs access. **Bill L.** stated they'll understand the concept once they know the situation.

Negative Declaration for Modification of All American Redemption Site Plan—**Bill Lape** made a motion to accept a negative declaration, Mike Piccolo seconded; 5-0. The board signed the approval form for the modification to the site plan to include propane dispensing. **Mark M.** thanked the board. The secretary will send the CPC the Final Action Report.

Kivort Subdivision Inquiry—**Harold Loder** asked if the ZBA had made a decision on the Kivort subdivision? **The secretary** it's taken some time for the ZBA chair to set the meeting, but she just received an email that the date has been set for June 25, 2013. Joanne kept calling her office so she contacted Doug Putnam and asked him to connect with Joanne Darcy Crum.

Warnerville Skating Rink Inquiry—**Harold Loder** asked about the Warnerville Skating rink? **Gene D.** stated Charlie Merwin bought it and has all kinds of plans, nothing on paper. He's cleaning it out, tons of junk, getting prices to convert it back to roller skating rink with offices in the back. The offices are already marked out from previous owner. He's looking for money through grants. **Mike P.** stated when he shut it down the building was sound, the owner just didn't get proper building permits. The college is looking for a place for the kids to have a non alcoholic dance club in Cobleskill. **Discussion.**

Constitution Pipeline Request—**Harold Loder** stated he received a letter from Constitution Pipeline in regard to their looking at the old Sabatta Farm now owned by Galasso's as a possible pipeyard for the pipeline project. There will only be 3 along the whole project. They were going to put it up on his land and he talked to Gene about it a while ago and it would be a Temporary Construction permit. The board looked at the location on the map. **Harold L.** stated the company wanted it somewhere near I-88 to stockpile their steel and valves and will probably be there three years. **Bill Lape** asked if they needed a permit? **Harold L.** stated no. **Tighe Lory** asked if they had any say in it? **Harold L.** stated no they really don't. **Bill L.** asked why they don't? **The secretary** questioned why they wouldn't have a say since it's in the Planned Development District? **Harold L.** stated it's a Temporary Permit. **Gene D.** stated it was a Temporary Construction Permit. **The secretary** stated that's a one year permit, which is what Lancaster got when storing their trailers there. **Mike P.** asked where exactly on the property it was going? **Bill L.** stated it's 14+ acres. **Tighe L.** asked where? It's very dangerous coming down Cross Hill Road. **Bill L.** stated he thinks they need some kind of approval. **Tighe L.** questioned the safety of the location concerning the little driveway right under the bridge and/or Beards Hollow Road; it's dangerous either way. **Harold L.** read the law that "A temporary permit may be issued by the zoning

S-934

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

officer for a period not exceeding one year, for non conforming uses incident to housing and construction projects, including such structures and uses as storage of building materials and machinery, the processing of building materials, and a real estate office located on the tract being offered, for sale, providing such permits are conditioned upon agreement by the owner or operator to remove the structure or structures or discontinue use upon expiration of the permit. Such permits may be renewed upon application to the Zoning Board of Appeals (ZBA) and Proof of Hardship shown for an additional period not exceeding one year". **Mike P.** asked does it say may be issued by codes officer, does it say permitted use? If it's a permitted use the planning board is out of it. He suggested they get an interpretation from the town Attorney. As a codes officer he reads it that he has permission to grant the permit. **Bill L.** stated for one year and then it has to go to the ZBA. **Tighe L.** asked even if they know they're going to be there for three years? **Bill L.** stated they get a permit from the zoning officer, then the next year they go to the ZBA and the next year they go to ZBA. **Harold L.** stated it may all be done by then. **Tighe L.** stated the location is so bad, there are terrible intersections there. **Mike P.** asked Gene to come to his office on Friday and he'll pull the aerials of the property. **Discussion.** The secretary questioned again why the Planning Board doesn't have authority since it's in the PDD. It's not an R1 use which is only reason something in PDD doesn't come to the Planning Board. **Harold L.** stated no. **Mike P.** stated the law says the zoning officer can grant a one year permit. **Bob Reed** asked if he was required to grant a permit? The secretary asked if the zoning officer can grant a temporary permit for one year when he knows from the beginning it will be a three year project? **Discussion** that they've said up to three year project, no one knows the time frame. **Mike P.** stated the town will need to get a bond for the roads. **Discussion** that it involves a state and county road. **Tighe L.** stated there are other concerns. People were concerned with Hotaling's plant sales looking junky, this is going to be a massive eyesore. **Bill L.** asked what's the difference between that and Lancaster? **Discussion** Lancaster is set back, beautiful building and they keep it neat and tidy. **Mike P.** stated it's going to have to be fenced off. **Harold L.** stated when they spoke to his sons about it they talked about a fence and gate. **Mike P.** stated what sends it into different light is it's temporary, Lancaster's is permanent. **Gene D.** asked how far off the road is this? **Tighe L.** stated look at the map, there is a blind turn and a house right on the road with Cross Hill and Beard's Hollow. Will they be flattening out the land? **Gene D.** stated he's sure they'll come in off Route 7. **More Discussion** of the topography of the site. **Mike P.** stated he's going to go and walk the site tomorrow.

Constitution Pipeline Mapping Route—Harold Loder stated Alicia Terry sent a letter stating County Planning and Development are providing technical assistance to towns so they are able to move forward with responding to AECOM's request to identify any cultural resources, environmental resources, and planned developments that might be located or impacted along the proposed pipeline path. The board members reviewed the maps and had no additions or corrections.

Zoning Re-Write Committee—Bill Lape asked where they are with the zoning re-write? The secretary explained the town board is waiting on the fracking expert, attorney David Slottje, to review and give his legal opinion.

7:55—**Adjourn—Bill Lape** made a motion to adjourn, Tighe Lory seconded.

Recorded By:

Maggie A. Smith, Planning Board Secretary

S-935

COMPANIES AND ORGANIZATIONS

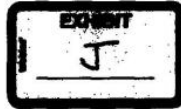
CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd



CENTER FOR
SUSTAINABLE
RURAL
COMMUNITIES



PO Box 193
Richmondville, NY 12149

December 2, 2013

Schoharie County Planning Commission:

The proposed Constitution Pipeline will likely have significant environmental and economic impacts on Schoharie County. Those impacts have been recognized by impacted landowners, neighbors, elected officials and school districts. Hundreds of individuals and groups have submitted comments to the Federal Energy Regulatory Commission (FERC) opposing the construction of the pipeline. Less than 50% of impacted landowners in Schoharie County have signed easement agreements, despite an expectation by the pipeline company that 85% - 90% of impacted landowners would have signed at this point in the regulatory process. The Town and Village of Richmondville have formally opposed the pipeline and several members of the Board of Supervisors have done the same. The Cobleskill-Richmondville Central School Board has rejected an easement proposal that would have allowed the pipeline to cross the Schoharie property of the BOCES. Opposition to the pipeline is highly organized and is working collectively through the grassroots organization Stop the Pipeline (STP). STP is currently represented by the Pace Environmental Litigation Clinic.

Constitution is proposing to significantly expand the footprint and capacity of the Wright Compressor Station as a key component of the pipeline project. That expansion will create the potential for significant environmental impacts, including reduced air quality, increased noise, traffic and community impacts as well as the potential to negatively impact the Town of Wright Karst Critical Environmental Area (CEA). Most importantly, the compressor station expansion will directly facilitate a massive build out of pipeline infrastructure through the heart of the county.

The scope and scale of potential environmental, economic and environmental impacts of this expansion absolutely demand a comprehensive environmental review. The Town of Wright has failed to take a "hard look" by merely completing an inadequate short SEQRA form, failing to consult subject matter experts to corroborate the applicant's claims and calculations and has not considered the full scope and future phases of the project as is required under SEQRA.

Further, contradicting statements included in the referral to the County Planning Commission seem to infer that the environmental assessment could be deferred to the pending EIS scheduled to be completed by FERC. That review, however, has not been conducted, has not been made available for public comment and has not been amended (post-comment) as is required by law.

The Center for Sustainable Rural Communities is a 501 (C)3 non-profit NY corporation.

S-936

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
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Therefore, deferring to a non-existent EIS months in advance of its earliest formal issuance would be premature and would not relieve the Town of Wright's responsibility to exercise due diligence and to take a "hard look" at the potential environmental, economic and cultural impacts of this project.

Given the above, the Center for Sustainable Rural Communities respectfully requests that the Schoharie County Planning Commission consider the following:

- The clear and potentially substantial county-wide significance of a compressor station expansion that is intended to facilitate the build-out of a massive multi-town pipeline infrastructure including the potential seizure of private property under eminent domain, the construction and operation of pipeline staging areas (contractor yards), blasting and other activities and results that are only possible if the compressor station expansion is approved.
- The need for a comprehensive environmental assessment of this proposal that is more thorough than a cursory short SEQRA review and includes the input and knowledge of subject matter experts on all aspects, scopes and phases of this complex project including, but not limited to: air quality, noise, traffic, economic impacts, habitat impacts, recreational impacts and other impacts as defined under SEQRA.
- If the Town of Wright can reasonably conduct a sufficiently comprehensive environmental review of such a complex proposal without expert assistance and if any deferral to the FERC conducted EIS requires that the EIS actually be completed, issued and cited before such time as the Town of Wright can make a legitimate determination and/or approval of the compressor station expansion.

Finally, the citizens of Schoharie County deserve to have confidence that a decision of this magnitude be conducted objectively and without being compromised by conflicts of interest or the appearance of impropriety. To that end, we respectfully request that the County Planning Commission poll its members before discussion and deliberation on this matter to determine if any of its members may be impacted by the proposed pipeline and thus the potential recipients of easement payments from the applicant, either as willing signatories of contractual agreements or as a consequence of the findings of a court proceeding related to eminent domain. We further respectfully request that any such conflicted member be excused from deliberation and voting on this matter and/or be asked to recuse him or herself from deliberation and voting.

Thank you in advance for your attention to this matter and your service to the residents of Schoharie County.

Robert Nied

Robert Nied

(Digitally signed)

Board of Directors

Center for Sustainable Rural Communities

cc: Schoharie County Attorney

The Center for Sustainable Rural Communities is a 501 (C)3 non-profit NY corporation.

S-937

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

TOWN OF RICHMONDVILLE RICHMONDVILLE, NY 12149

JOHN BARLOW
Town Supervisor
PO BOX 555
Richmondville, NY 12149
518-234-3835



MAGGIE SMITH
Clerk/Collector
P. O. Box 39, 340 Main
Richmondville, NY 12149
518-294-7150

November 5, 2009 / ~~December 10, 2009~~

CO65-1
cont'd

Schoharie Valley Watch
P.O. Box 193
Richmondville, NY 12149

Re: Ethics complaint concerning Planning Board Chairman Harold Loder

Dear Sirs/Madam:

Please accept this letter in response to your letter complaint dated August 18, 2009.

Article 18 of the New York State General Municipal Law authorizes local governments to establish ethics boards to investigate ethics concerns and render advisory opinions. The Town of Richmondville, however, has not created an ethics board to address these matters. Therefore, the Town Board has considered the matters contained in your letter complaint and is responding thereto.

The Town of Richmondville has a long standing written "Ethics Code", which was adopted by resolution in 1991, as Resolution No. 24-1991.

The Ethics Code, among other things, delineates certain prohibited activities of all the offices and employees of the Town, which would be characterized as conflicts or potential conflicts of interest. Additionally, the Ethics Code establishes a penalty mechanism whereby "any person who shall knowingly and intentionally" violate the Ethics Code may be penalized and disciplined according to the provisions of the Code.

Upon our review and investigation of the issues and the allegations raised in your letter complaint of August 18, 2009, we have concluded that Planning Board Chairman Harold Loder has not knowingly and intentionally violated the Richmondville Ethics Code. Therefore, no penalties, as provided for in the Code, will be imposed.

However, the alleged conflicts of interest, and other issues in your letter complaint, such as SEQRA, have raised a heightened awareness of such matters in general, and offer an excellent opportunity for the Town Board to take the following immediate action:

S-938

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Schoharie Valley Watch

November 5, 2009

Page 2 of 3

1) The Town Board directs that the Town Clerk forward to each and every member of the Richmondville Planning Board the following:

- (a) A copy of the Richmondville Ethics Code;
- (b) An attestation for signature and filing, pursuant to Section V of the Ethics Code;
- (c) A copy of this letter;
- (d) A copy of New York State Attorney General Informal Opinion #95-2.

2) The Town Board hereby directs the Town Clerk to review the files of all Town officers and employees to ensure that all such persons have within the preceding two years received and reviewed a copy of the Ethics Code, and have filed an attestation with the Town Clerk in such regard.

3) In addition to the Planning Board officers, for any and all Town officers and employees who have not filed an attestation within the preceding two years, as required by Section V of the Ethics Code, the Town Board directs the Town Clerk to distribute a copy of the Ethics Code to such person(s), along with an attestation for signature and filing.

4) The Town Board directs that the Chairman of the Planning Board furnish the Town Board with information concerning all the relevant education and training that each Planning Board member has undergone since becoming a member of the Planning Board, and in particular education/training involving SEQRA.

5) The Town Board directs the Chairman of the Planning Board to furnish the Town Board with a list of all the relevant upcoming educational and training programs available to Planning Board members for the calendar year 2010, and in particular those programs involving SEQRA, and simultaneously furnish the Town Board with a recommendation as to which programs should be attended to by the individual Planning Board members.

6) The Town Board hereby admonishes the Planning Board to be extremely cognizant and aware of not only conflicts of interest and potential conflicts of interest, but matters which present an "appearance of impropriety." In such instances, the affected Planning Board member(s) must recuse himself/herself from not only voting, but also all discussions, actions and deliberations involving such matter(s).

7) The Town Board directs the Planning Board, in any instance when a question arises as to whether a conflict or potential conflict of interest situation is present, to make every effort to immediately contact the Town Attorney for advice, pursuant to Section III (B) of the Ethics Code.

S-939

COMPANIES AND ORGANIZATIONS

CO65 – Center for Sustainable Rural Communities (cont'd)

20140505-0067 FERC PDF (Unofficial) 05/05/2014

CO65-1
cont'd

Schoharie Valley Watch

November 5, 2009

Page 3 of 3

8) In addition to any customary correspondence filing at the Town Clerk's Office, the Town Board directs the Town Clerk to file a copy of this letter in the personnel file(s) of the Planning Board member(s), along with a copy of the letter complaint from Schoharie Valley Watch, dated August 18, 2009.

For your convenience, a copy of the Town of Richmondville Resolution No. 24-1991 ("Ethics Code") and a copy of Attorney General Opinion 95-2, is enclosed.

Thank you.

Sincerely,



Town Board of Richmondville
By: John Barlow, Supervisor

Encl. 1) Copy of Ethics Code
2) AG Op. # 95-2

cc: Town Clerk (w/encl)

S-940

COMPANIES AND ORGANIZATIONS

CO66 – Binghamton-Oneonta Building and Construction Trades Council

20140415-0067 FERC PDF (Unofficial) 04/01/2014

BINGHAMTON-ONEONTA BUILDING & CONSTRUCTION TRADES
COUNCIL
PO Box 670
Binghamton, NY 13902

April 1, 2014

Kimberly Bose
Federal Energy Regulatory Commission
888 First Street, NE Room 1A
Washington, DC 20426

Constitution Pipeline-docket # CP13-499

Dear Director Bose:

CO66-1

Laborers Local 785 is one of the eighteen Binghamton-Oneonta Building & Construction Trades Council affiliate unions. The Binghamton-Oneonta Building Trades Council represents over 3,000 union members and their families in Broome, Chenango, and Otsego counties here in New York. Our union members are not only construction workers- we are homeowners, taxpayers, parents, grandparents, and members of our local communities.

The Constitution pipeline will have both short term and long-term positive impacts from an increase in annual property taxes paid by the pipeline. Table 4.9.7-1, page 4-114 summarizes three of the major positive economic impacts for this pipeline and its construction. In New York State, construction payroll is estimated to be \$103.1 million dollars; annual property taxes are estimated to be \$12.7 million per year; and the cost of purchasing local materials is estimated to be \$20.3 million.

The Constitution pipeline will bring an estimated 1,300 much needed construction jobs to this area as well as an increase in jobs related to providing and transporting construction materials and supplies. Construction of this pipeline will be performed by Union construction workers. Our National Pipeline agreement requires that a minimum of 50% of the labor force be local, union labor ensuring that the a substantial portion of the personal income generated stays in the local communities. Section 4.9.1, page 4-136, "the economic benefits of its proposed project, ...would generate more than 224 indirect jobs in New York, five of which would be more long-term....jobs associated with construction and operation would generate approximately \$113 million in personal income for those individuals directly and indirectly employed".

America is an energy hungry nation. This energy must come from somewhere. This report acknowledges our need for energy and makes the following comments in the Executive summary, Alternatives Considered, ES-10 & ES-11, "The no-action alternative was considered for the projects. While the no-action alternative would eliminate the environmental impacts identified in the draft EIS, the user markets would be denied the projects' objective of delivering 65,000 Dth/d of natural gas from existing supplies in Susquehanna County, Pennsylvania to

CO66-1

The commentator's statements in support of the proposed projects are noted.

COMPANIES AND ORGANIZATIONS

CO66 – Binghamton-Oneonta Building and Construction Trades Council (cont'd)

20140415-0067 FERC PDF (Unofficial) 04/01/2014

BINGHAMTON-ONEONTA BUILDING & CONSTRUCTION TRADES
COUNCIL
PO Box 670
Binghamton, NY 13902

CO66-1
cont'd

markets in New York and New England. This might result in greater reliance on alternative fossil fuels, such as coal or fuel oil or both. We also considered energy conservation and efficiency, and other energy source alternative (including renewable energy sources). Other fossil fuels are not as clean as natural gas, and renewable sources such as solar and wind power are not always reliable or available in sufficient quantities to support market requirements. We concluded that the no action alternative energy efficiency, and other sources of energy were not viable alternatives to the proposed projects in the required timeframe."

Economic benefits should not outweigh public safety. This environmental study reviewed the reliability and safety of the pipeline and the aboveground facilities and their construction. In the Executive Summary discussion on Reliability and Safety, pg ES-9, the report provides, "the pipeline and aboveground facilities associated with the proposed projects would be designed, constructed, operated and maintained to meet the Department of Transportation's (DOT) Minimum Federal Safety Standards in 49 CFR 192 and other applicable federal and state regulations. These regulations include specifications for material selection and qualification; minimum design requirements and protection of the pipeline from internal, external, and atmospheric corrosion.....We conclude that the Applicants' implementation of the above measures would protect public safety and the integrity of the proposed facilities."

In conclusion, I believe this study accurately portrays the impacts related to the construction and operation of the proposed Constitution Pipeline. I also believe the conclusion can be made that the Constitution Pipeline will provide New York and New England with clean, safe energy, and will provide short and long term economic benefits to the Southern Tier of New York including jobs for our union members. The Binghamton-Oneonta Building & Construction Trades Council respectfully request that the Constitution Pipeline EIS be accepted as written and that the Federal Energy Regulatory Commission issue a Notice to Proceed with Construction.

Sincerely,



David Marsh
Representative Union Members Affiliate
Binghamton-Oneonta Building & Construction Trades Council

S-942

COMPANIES AND ORGANIZATIONS

CO67 – NYS Economic Development Council

S-943

20140401-5099 FERC PDF (Unofficial) 4/1/2014 10:11:49 AM

Brian McMahon, Albany, NY.
April 1, 2014

To whom it may concern:

CO67-1 The New York State Economic Development Council (NYSEDC) is the state's principle organization representing economic development professionals. The purpose of NYSEDC is to promote the economic development of the state and its communities, encourage sound practices in the conduct of regional and statewide development programs, and develop education programs that enhance the professional development skills of NYSEDC members.

NYSEDC is writing in support of the proposed Constitutional Pipeline, which would extend from the Northern Tier of Pennsylvania for 124 miles to the Town of Wright in Schoharie County, New York. There, the pipeline would connect with a major North-South line - Iroquois gas line - which is a major supplier to the New York City market, and the Tennessee line which serves New England.

This pipeline would help achieve both environmental and economic development objectives of the state.

New York's energy plan supports the build-out of natural gas infrastructure to meet the environmental objective of replacing home heating oil with natural gas. Furthermore, while not intended to directly serve businesses in the areas it traverses, the Constitutional Pipeline would benefit connecting lines that will serve businesses and residences in the region. For example, Leatherstocking Gas Company has proposed a line to connect with Amphenol Inc., the largest employer in Sidney, New York and several communities in the region. This would significantly enhance economic development opportunities for existing businesses and help attract investment from outside the state.

The FERC DEIS determined that "construction and operation of the projects would result in limited adverse environmental impacts," and that any adverse impacts "...would be reduced to less-than-significant levels." Given both the environmental and economic benefits the Constitutional Pipeline would produce for the region and the state, NYSEDC strongly urges the prompt approval of the company's application.

Sincerely,
Brian McMahon


CO67-1 The commentator's statements in support of the proposed projects are noted.

COMPANIES AND ORGANIZATIONS

CO68 – Delaware-Otsego Audubon Society

S-944

20140613-5094 FERC PDF (Unofficial) 6/13/2014 12:04:49 PM



DELAWARE-OTSEGO AUDUBON SOCIETY, INC.
P.O. BOX 544, ONEONTA, NY 13820

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

June 12, 2014

Dear Ms. Bose:

CO68-1

I am writing on behalf of our organization regarding the Draft Migratory Bird and Upland Forest Plan presented by Constitution Pipeline Company, LLC for its proposed Constitution Pipeline Project in northeastern Pennsylvania and eastern New York (Docket No. CP13-499-000).

We had earlier submitted comments on the Draft Environmental Impact Statement for this project, focusing on the impacts to birds from construction and operation. In particular, we noted the large-scale forest fragmentation resulting from the project, and the loss of important breeding habitat for numerous at-risk species, both from direct removal of forest vegetation, and also from the increased predation and nest parasitism that the cleared pipeline corridor would create.

Unfortunately, the draft plan and proposed mitigation measures are seriously flawed and would provide little, if any reduction in the well-documented negative impacts to the habitat and the birds.

CO68-2

The plan focuses on seven bird species identified as being of "conservation concern", of which three species use interior forest habitat that will be affected by the pipeline corridor. This narrow definition of impacted birds greatly underestimates the threats to breeding birds and avian life from the project. In New York State alone, a conservative list of birds that use interior forests in the region of the Constitution project—in most cases for breeding habitat—would total nearly 60 species. Of these, five species—Cooper's Hawk, Sharp-shinned Hawk, Northern Goshawk, Red-shouldered Hawk and Red-headed Woodpecker—are identified as Species of Special Concern by the NY State Department of Environmental Conservation (<http://www.dec.ny.gov/animals/7494.html>).

In addition, 26 of the species utilizing forest habitat are showing multi-decade population declines in New York, according to data from the US Geologic Survey's North American Breeding Bird Survey (Sauer, J. R., J. E. Hines, J. E. Fallon, K. L. Pardieck, D. J. Ziolkowski, Jr., and W. A. Link. 2014. *The North American Breeding Bird Survey, Results and Analysis*

- CO68-1

The commentor's reference to their previously filed comments (CO13 and CO41) and the comment that the Preliminary Migratory Bird and Upland Forest Plan is flawed is noted. See the response to comment FA4-29.
- CO68-2

We recognize that many bird species, including those listed as birds of conservation concern or those that use or nest in interior forest habitats, may be impacted by the proposed pipeline project. The intent of the Preliminary Migratory Bird and Upland Forest Plan is to define impact avoidance and minimization measures and to propose mitigation to account for unavoidable impacts. These mitigation measures would also minimize impacts on birds that are not listed as birds of conservation concern but also use interior forest habitats. See also the response to comment CO13-2 and section 4.6.1 of the EIS.

COMPANIES AND ORGANIZATIONS

CO68 – Delaware-Otsego Audubon Society (cont'd)

S-945

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CO68-2 cont'd	<p>1966 - 2012. Version 02.19.2014 USGS Patuxent Wildlife Research Center, Laurel, MD). This survey is recognized as the longest-running and most consistent census of breeding birds in the US and Canada.</p> <p>A more holistic approach to the importance of a region and its habitat to at risk birds is provided by Partners in Flight (PIF) (www.partnersinflight.org)--a cooperative effort involving partnerships among federal, state and local government agencies, philanthropic foundations, professional organizations, conservation groups, industry, the academic community, and private individuals. PIF has developed a ranking of bird species based on the importance of a physiographic area to the overall populations of these species.</p> <p>For the Allegheny Plateau region that includes the route of the Constitution Pipeline, four species utilizing northern hardwood-mixed forest habitat are identified as species either of high regional concern, defined as:</p> <p>"Species that are experiencing declines in the core of their range and that require immediate conservation action to reverse or stabilize trends. These are species with a combination of high area importance and declining (or unknown) population trend." (Scarlet Tanager; Black-billed Cuckoo)</p> <p>Or as species of regional responsibility, defined as:</p> <p>"Species for which this region shares in the responsibility for long-term conservation, even if they are not currently declining or threatened. These are species of moderate overall priority with a disproportionately high percentage of their total population in the region." (Louisiana Waterthrush; Rose-breasted Grosbeak)</p>
CO68-3	<p>It can be anticipated that nearly all of the forest bird species will be negatively impacted by the pipeline corridor, through loss of foraging and breeding habitat, and increased predation and parasitism, as noted. The plan does not address these species or impacts—a glaring omission in an environmental review—and one that results in an inaccurate and incomplete assessment of the project's impacts.</p> <p>The plan arbitrarily defines a minimum 35 acre forested parcel "... that would adequately support interior forest species ...". This sized parcel is well-below the known minimum forest area for presence and probable successful breeding for many of these birds. For example, the Cornell University Laboratory of Ornithology has carried out two large scale research projects to find the necessary forest plot sizes for likely successful breeding for several species.</p>
CO68-4	<p>Project Tanager (www.birds.cornell.edu/conservation/tanager/projecttananger.html) calculated the minimum-sized forest patch required to achieve the same probability of supporting Scarlet Tanagers as a suitable, unfragmented forest. In landscapes representative of the region encompassing the Constitution Pipeline, the minimum area was found to be 148 acres—over three times the area used in the study as an adequate parcel for breeding.</p> <p>Cornell's Birds in Forested Landscapes study determined even higher minimum areas needed for forest thrushes, including 435 acres for Hermit Thrush and 200 acres for Wood Thrush. For Veery, even a 400 acre patch of forest resulted in a significant decline in breeding</p>

CO68-3

Loss of habitat and potential increases in nest predation / parasitism are discussed in section 4 of the Preliminary Migratory Bird and Upland Forest Plan and in section 4.5.3 of the EIS. See also the response to comment CO26-14. The draft Plan states that "Based on these studies, Constitution has developed a minimum interior forest block size of 35 acres that would adequately support interior forest species (10% interior forest based on 350-acre minimum forest block)." This means that the forest block would encompass at least 350 acres in total, of which at least 35 acres would be comprised of interior forest. It is not accurate to say that the Plan arbitrarily defined a "minimum 35 acre forested parcel" as being adequate to support interior forest species; rather, the forested block would be at least 350 acres in size. The agency coordination regarding the size of the forest blocks to be considered is ongoing, and forest block size could be modified in the final version of the Plan. Our assessment of the Plan is provided in sections 4.5 and 4.6.1 of the final EIS.

CO68-4

Minimum habitat block sizes for forest interiors for different species based on literature are discussed in section 4 of the Preliminary Migratory Bird and Upland Forest Plan. See the response to comment CO68-3.

COMPANIES AND ORGANIZATIONS

CO68 – Delaware-Otsego Audubon Society (cont'd)

S-946

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CO68-4
cont'd

success compared to unfragmented forest. Again, these acreages greatly exceed the 35 acre figure used in the Constitution study.

Many other forest-dwelling birds require similar large forested areas for breeding. Use of the artificially low and scientifically indefensible minimum area, along with the study's analysis of only three forest bird species, results in a convenient minimization of forest bird impacts from the pipeline corridor.

CO68-5

Flowing from this flawed analysis of the effects of the pipeline on forest-breeding birds is an entirely insufficient and inappropriate mitigation plan. It must be kept in mind that the impacts of the pipeline corridor will remain essentially in perpetuity. No reforestation of the corridor will occur—it will be maintained in an open state—and even if tree regeneration were permitted, it would likely take 2 or 3 human generations to revert to mature forest. Whether the corridor and surrounding forest would be repopulated by the existing bird species is questionable, and considering the ongoing decline and tenuous status of many of these birds, could be considered unlikely.

In this light, the proposed and largely undefined mitigation to compensate for impacts to 1549 acres does not approach the far-reaching and permanent impacts to forest birds along the 126 mile pipeline corridor with associated clearings and access roads. Considering that the ridgetop areas targeted for the pipeline contain much of the last remaining large unfragmented forest in the region, this project stands as the largest single act of forest disturbance in decades. The importance of these woodlands to forest birds both regionally and continent-wide in many cases, cannot be overstated. The reality is that no mitigation that would equal the loss of this habitat is possible.

We believe that this study is grossly inadequate and inaccurate and does not meet the requirements of the National Environmental Policy Act which requires agencies to take a hard look at means to mitigate adverse environmental impacts when preparing environmental impact statements. In this instance, any significant reduction in adverse impacts to forest birds would require re-routing of the pipeline to avoid large forested blocks. Proposals to route the pipeline along the I-88 corridor, or along existing utility rights-of-way are feasible and could achieve the necessary impacts reductions.

We urge the Commission to give serious consideration to these alternative routes, and at a minimum, require a complete and accurate study of the impacts of the Constitution Pipeline on forest-dwelling birds.

Sincerely,



Andrew Mason, Co-President
1039 Peck St.
Jefferson, NY 12093
(607) 652-2162
AndyMason@earthling.net

CO68-5

Reforestation of the temporary right-of-way would occur; however, the permanent right-of-way (50 feet) would be maintained in a grassy or shrubby condition for the life of the project. Disturbed areas outside the permanent right-of-way would be allowed to revert to forested cover, although this process would take decades to re-grow to maturity. The construction right-of-way typically would be either 110 or 100 feet wide in upland forested areas, so about one-half or more of the disturbed area (plus extra workspaces) would be allowed to re-grow with tree cover.

Constitution proposed to deposit funds to be used for the conservation of migratory bird habitat including such measures as acquisition or long-term conservation of lands important to migratory bird conservation, implementation of restoration measures on such lands or on federal / state-owned parcels, long-term management of such lands, public outreach, and study or research grants for species of concern. The amount of the funds to be deposited is yet to be determined and would be based on the value of the habitats lost, the requirements to meet the desired conservation actions, and other factors. The amount would be determined through Constitution's coordination with the FWS, the PGC, the PADCNR, and the NYSDEC. The funds would be disbursed by a selected, third-party, non-profit conservation organization. Our assessment of the Plan is provided in sections 4.5 and 4.6.1 of the final EIS.

See the responses to comments SA4-1 and SA4-2 regarding alternative M.

COMPANIES AND ORGANIZATIONS

CO68 – Delaware-Otsego Audubon Society (cont’d)

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cc: Ms. Jennifer Siani – USFWS – Pennsylvania Field Office
Ms. Corrie Laughlin – Pennsylvania Game Commission, Ecological Services Section
Ms. Ellen Shultzabarger - Pennsylvania Department of Conservation and Natural
Resources - Bureau of Forestry - Division Chief
Mr. Stephen Tomasik - NYSDEC

S-947

COMPANIES AND ORGANIZATIONS

CO69 – Earthjustice



June 13, 2014

Via Electronic Filing

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: **Comments on the Preliminary Migratory Bird and Upland Forest Plan for the Proposed Constitution Pipeline Project, Docket No. CP13-499-000**

Dear Secretary Bose:

CO69-1 On behalf of intervenors in the above-referenced proceeding—Catskill Mountainkeeper, Clean Air Council, Delaware-Otsego Audubon Society, Delaware Riverkeeper Network, Riverkeeper, Inc., and Sierra Club (collectively “Intervenors”)—we respectfully submit these comments on the Preliminary Migratory Bird and Upland Forest Plan (“Plan”) for the proposed Constitution Pipeline Project (“Project”), submitted to the Federal Energy Regulatory Commission (“Commission”) on May 6, 2014, by the Constitution Pipeline Company, LLC (“Constitution”). As explained in detail in the attached letter from restoration ecologist Kevin Heatley, which is incorporated fully by reference herein, the Plan seriously underestimates the significance of the impacts on forest ecosystems that will be disrupted by Project construction and operation and on species that those ecosystems support. It also fails to identify mitigation measures that can adequately protect against such adverse impacts. In addition, the Plan includes no analysis whatsoever of the potential impacts on special status bat species or any assessment of mitigation measures necessary to insure the protection of those species. Given these major shortcomings, the Commission cannot rely on the Plan to satisfy its obligations under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4331 *et seq.*, which requires agencies to take a hard look at means to mitigate adverse environmental impacts when preparing environmental impact statements. 40 C.F.R. §§ 1502.14(f), 1502.16(h).

CO69-2 Intervenors previously submitted comments on the Commission’s Draft Environmental Impact Statement (“Draft EIS”) for the Project, critiquing the sufficiency of the environmental impact review contained therein. In particular, Intervenors took issue with the Commission’s underestimation of impacts to interior forests and its failure to conduct any meaningful

CO69-1

The commentator’s opposition to the Preliminary Migratory Bird and Upland Forest Plan is noted. The plan focuses on upland forests and migratory birds as recommended by the FERC staff; however, Constitution did acknowledge in section 5.4 that mitigation funds could be used to support or research other species, such as the northern long-eared bat. The FWS does not allow companies to fund research as a form of mitigation for impacts on listed species. The northern long-eared bat is proposed for listing by the FWS. See the response to comments CO41-53 through CO41-80 (Heatley Report).

CO69-2

The commentator’s reference to their previously filed comments (CO11 and CO41) is noted. See the response to comment CO9-2 regarding the public ability to review and comment on the Plan. See the response to comment CO68-3 regarding forest block size. We have evaluated reduced right-of-way widths and re-planting of trees in areas outside the permanent right-of-way in an updated section 4.5.3 of the EIS. We have also updated section 4.6.1 of the EIS in regard to migratory birds, including our assessment Constitution’s proposal to clear trees outside of the FWS-recommended tree clearing window and Constitution’s proposal to not perform nesting surveys or to implement nest buffers. The commentator’s opposition to the Plan is noted.

COMPANIES AND ORGANIZATIONS

CO69 – Earthjustice (cont'd)

S-949

CO69-2
cont'd

evaluation of ways that these impacts could be avoided, minimized, or mitigated. Rather than undertake the requisite analyses, the Commission indicated that a forthcoming “Upland Mitigation Plan” to be prepared by Constitution would address mitigation of Project impacts on interior forests. The Draft EIS called for the submission of such a plan during the public comment period. However, the Plan was not provided until nearly a month after the comment period had closed. Excluding the public from involvement in the evaluation of a document that determines the level of harm to which important natural resources will be subject flies in the face of NEPA’s public participation goal. In order to satisfy NEPA’s mandates, the Commission must issue a revised draft EIS that analyzes fully the Project’s adverse impacts on forests and the measures available to avoid, minimize, or mitigate those impacts and must allow for public review and comment on the revised draft.

As discussed in Mr. Heatley’s letter, Constitution assumes that 35-acre interior forest blocks are sufficient to support bird species identified in the vicinity of the Project, but provides no scientific basis for this assumption. The use of this arbitrary metric results in an underestimation of the extent and the severity of the Project’s impact on interior forest habitat. In addition, Constitution does not explain why a narrower permanent right-of-way through upland forest areas would not be feasible or why a proactive plan for restoration of workspaces and temporary access roads involving tree planting was rejected in favor of a plan that provides only for passive revegetation via natural succession. The Plan contemplates that Project construction will overlap the primary migratory bird nesting season, but fails to explain how harm to nests with eggs or young birds in them will be avoided or minimized. Instead, the Plan focuses on off-site activities that Constitution will undertake in an effort to “offset” the loss of forest ecosystems caused by Project construction and maintenance. The measures proposed in the Plan do not come close to mitigating adequately the great harm to valuable forest ecosystems that the Project will cause.¹

CO69-3

In order for the Commission to satisfy its obligation to prepare an environmental impact statement that takes a hard look at the full suite of Project impacts and at all available mitigation measures, it must either require Constitution to prepare a revised Plan that addresses the deficiencies identified in these comments or perform the requisite analyses itself and issue a revised draft EIS that includes a comprehensive discussion of adverse impacts to forests and means of mitigating those impacts. Until all of the environmental impacts of the Project and available mitigation measures have been examined, the Commission lacks any legitimate basis for a final decision under NEPA or a public interest determination under the Natural Gas Act.

In addition, and as discussed in Intervenor’s prior comments, the Draft EIS was based on incomplete information and, only after the close of the public comment period, were the numerous studies, analyses, and plans that the Commission had requested from Constitution—more than 100 pages of supplemental material—made available to the public. Before the Commission can reach a final decision about the Project’s environmental impact, it should evaluate those supplemental materials, assess their sufficiency, incorporate any relevant information into its analysis, and issue a revised draft EIS for public review and comment.

¹ See also Delaware-Otsego Audubon Society, Comments on Draft Migratory Bird and Upland Forest Plan, FERC Docket No. CP13-499-000 (filed June 13, 2014) (incorporated fully by reference herein).

CO69-3

Our assessment of the Plan is provided in sections 4.5 and 4.6.1 of the final EIS. See the response to comment CO9-2 regarding the public’s ability to review and comment on the Plan and other materials filed after the end of the comment period.

COMPANIES AND ORGANIZATIONS

CO69 – Earthjustice (cont’d)

S-950

CO69-4

For these reasons, the environmental review of the Project remains incomplete and the Commission must conduct additional analyses of the Project’s environmental impact, measures to mitigate that impact, and alternatives that would result in fewer or less severe impact and issue a revised draft EIS for public review and comment prior to proceeding with a decision on Constitution’s application for a Certificate of Public Convenience and Necessity.

Respectfully submitted,



Bridget M. Lee

*On behalf of Catskill Mountainkeeper,
Clean Air Council, Delaware-Otsego
Audubon Society, Delaware Riverkeeper Network,
Riverkeeper, Inc., and Sierra Club*

CO69-4

The commentor’s statement regarding their suggested path forward for environmental review is noted. See the response to comment FA1-1 regarding adequacy of the draft EIS. The final EIS has been updated with new information and analyses where appropriate and in response to comments made by the public.

COMPANIES AND ORGANIZATIONS

CO69 – Earthjustice (cont’d)

S-951

June 11, 2014

Bridget Lee
Earthjustice
48 Wall Street
New York, NY 10005

RE: Review of Preliminary Migratory Bird and Upland Forest Plan

Dear Ms. Lee,

CO69-5 Per your request, I have reviewed the “Preliminary Migratory Bird and Upland Forest Plan” submitted by the Constitution Pipeline Company, LLC (“Constitution”) to the Federal Energy Regulatory Commission (“FERC”) on May 15, 2014 and the accompanying letter from Constitution to the U.S. Fish and Wildlife Service. As outlined below, the plan fails to fully evaluate the adverse effects of Constitution’s proposed pipeline project on forest ecosystems and the species that rely on such habitats and, in fact, significantly underestimates the impacts of the project on ecosystem structure and function. Moreover, the mitigation measures identified in the plan are not sufficient to protect against the adverse impacts of the construction and operation of the pipeline.

CO69-6 **I) Preliminary Migratory Bird and Upland Forest Plan**

- Constitution proposes to maintain permanently a 50-foot right-of-way (“ROW”) in upland areas in an herbaceous or scrub/shrub condition thorough periodic vegetation management, but indicates that, in wetlands, it will maintain only a 10-foot herbaceous swath over the pipeline and will remove trees within 15 feet on either side of the pipeline. As discussed in my April 7, 2014 report on the FERC DEIS for the project, the maintenance of a permanent ROW that is narrower than 50 feet is technically feasible. Given the ecological benefits that would flow from limiting the area of forest that is disturbed or from restoring a greater area of land in upland systems, a narrower ROW should be considered. The conclusion that a 50-foot ROW is sufficiently protective is unjustified and discounts the value of upland ecosystems.

CO69-7 • Constitution proposes to “restore [temporary access roads] to their preconstruction contours and [to] allow the disturbed area to revert back to the original condition, to the extent practicable.” Plan at 1-1. This approach is, from an ecological perspective, highly problematic. Abandonment of temporary access roads to unmanaged colonizing by random vegetation likely will result in invasive species establishment and/or the dominance of low quality, early successional plant species. In order to insure restoration of the ecological community that existed prior to project construction, FERC should require Constitution to develop site-specific restoration plans that incorporate strategies for desirable plant establishment and for routine maintenance. Indeed, the plan itself identifies the “transition of vegetation from the edges of the construction ROW to the adjacent forested areas” as one of two factors that bear directly on the severity of the effect of eliminating interior forest. Plan at 4-1.

CO69-8 • The plan’s assessment of impacts to migratory birds relies on the assumption that a 35-acre interior forest block is sufficient to support the interior forest dwelling bird species that have been identified in the area. However, and as discussed in my April 7, 2014 report, this metric appears to have been reached arbitrarily. Constitution points to the guidelines used by a state

CO69-5 The commentor’s opposition to the Preliminary Migratory Bird and Upland Forest Plan is noted.

CO69-6 See the response to comment CO69-2 regarding right-of-way width.

CO69-7 Based on our experience with restoration, we conclude that the replanting of trees in formerly disturbed areas would not significantly enhance or expedite the return of forest habitat. Typically, in areas with adequate rainfall and stable soils (as would occur with establishment of herbaceous cover during restoration), tree saplings readily colonize disturbed areas within 2 or 3 growing seasons. Constitution would work with the NRCS and local conservation agencies to finalize development of seed mixes to be used to revegetate the right-of-way. Constitution would be required to monitor the right-of-way for at least 2 growing seasons following construction to ensure proper revegetation and we recommended in section 4.5 that they would monitor for at least 3 years following successful revegetation (as determined by the FERC) for invasive species.

CO69-8 See the response to comment CO68-3 regarding minimum forest block sizes.

COMPANIES AND ORGANIZATIONS

CO69 – Earthjustice (cont'd)

S-952

CO69-8 cont'd	in which the project is not situated and gives no indication of how those guidelines were developed, whether they were based on accepted science, or why they should be considered relevant. Indeed, the plan mentions that some species require 2,500 acres of intact forest, but fails to assess the specific needs of the species that are expected to be present in the project area. Given the high degree of variability across the habitat requirements of different species, a more prudent approach to evaluating the project's impacts would involve a calculation of the new forest edge zone created by project construction and the total acreage of interior forest loss that would result.
CO69-9	<ul style="list-style-type: none"> Constitution claims that "Larger forested blocks or areas where fragmented forests are generally grouped close together and/or connected by vegetated corridors can still provide sufficient quality habitat for interior-breeding species." Plan at 4-1. However, the plan fails to identify any scientific basis for this claim or to include any discussion of whether the claim applies to the species that have been identified as likely to be present in the project area.
CO69-10	<ul style="list-style-type: none"> Constitution claims that "Sufficient interior forests will remain undisturbed in areas outside the construction ROW and avian species are likely to populate these areas." Plan at 4-2. Without a full spatial analysis of interior forest resources within a defined geographic area and a corresponding population study of target species, this claim cannot be supported.
CO69-11	<ul style="list-style-type: none"> Constitution claims that "Direct impacts to nesting interior forest bird species will be avoided as the majority of vegetation clearing activities are not anticipated to take place within the typical nesting periods for bird species in the Project area." Plan at 4-2. However, the plan indicates that construction activities "will occur throughout the year and will overlap the primary migratory bird nesting season (early April through late-July)." Plan at 4-1. In order to insure the protection of migratory bird species and their nests, FERC should prohibit any tree clearing and other construction activities that will disturb forest habitat between early April and late July. Constitution should make a detailed schedule of proposed construction activities available for review and comment by the public.
CO69-12	<ul style="list-style-type: none"> The plan classifies forest areas as having high, moderate, or low value to migratory birds. These classifications are then used to evaluate the significance of the project's effects and the need for mitigation measures. However, the distinction between high and moderate value—based on the arbitrary 35-acre metric discussed above—is meaningless from a scientific standpoint. The classifications result in a serious underestimate of negative effects on forest habitat. Only those edge effects associated with "high" value habitat are considered—i.e., only the effects associated with fewer than 10 miles of the 126-mile pipeline. The clearing of trees in the project ROW eliminates not just the habitat created by those trees; it converts 300 feet on either side of the project ROW from valuable interior forest habitat to less valuable edge habitat. The plan fails to evaluate these impacts for the forests arbitrarily classified as "moderate value". As a result, the plan does not account for the generation of edge impacts associated with 66% of the interior forest targeted for direct cutting (289.12 of 439.69 acres). It also fails to account for the increased penetration of edge effects, and subsequent loss of interior forest habitat, associated with the elimination of 386.15 acres of critical buffer forest. Plan at 4-3, Table 2.
CO69-13	<ul style="list-style-type: none"> The plan fails to calculate the loss of interior forest due to the creation of, and edge impacts from, temporary and/or permanent access roads.

CO69-9	Constitution provided the following citation in response to our environmental information request. Harris, L. D. 1984. The Fragmented Forest – Island Biogeography Theory and the Preservation of Biotic Diversity. University of Chicago Press. 230p.
CO69-10	The comment regarding remaining blocks of interior forest in the project region is noted. Based on our review of aerial photography for the project vicinity and region, we conclude that multiple, well-distributed blocks of forest, including interior forest, would remain in the area if the Constitution pipeline is certificated and built.
CO69-11	See the response to comment CO69-2.
CO69-12	Constitution's proposed habitat quality classifications and quantitative assessment are being developed in coordination with the FWS, the PGC, the PADCNr, and the NYSDEC. Ultimately, these parameters will be assigned with agency review and input. It is reasonable to assume that some forested areas would have relatively greater habitat value based on their characteristics, such as designation as an Important Bird Area, value of interior forest relative to edge forest, and project disturbance resulting in the total area of remaining interior forest being reduced to below a threshold quantity. We concur that the current version of the Plan addresses indirect effects to forest interior (300-foot-wide buffer zone on both sides of new corridors within forest interior) only for designated high quality habitats. The agency coordination regarding indirect impacts on and mitigation for forest interiors is ongoing and could be modified in future versions of the Plan. Our assessment of the Plan is provided in sections 4.5 and 4.6.1 of the final EIS.
CO69-13	The agency coordination regarding temporary and permanent impacts on and mitigation for forest interiors in relation to new (including permanent) access roads is ongoing and could be modified in future versions of the Plan. Our assessment of the Plan is provided in sections 4.5 and 4.6.1 of the final EIS.

COMPANIES AND ORGANIZATIONS

CO69 – Earthjustice (cont'd)

S-953

CO69-14

- The plan contemplates allowing temporarily disturbed areas to revegetate via natural succession. This is inadequate. Proper restoration of these forest systems cannot be achieved without site-specific restoration plans that clearly define targets for species composition and habitat type and that require tree planting. Simply abandoning the areas to unmanaged colonization from unknown seed sources is likely to result in the establishment of low-value species and cannot insure a return to pre-construction conditions. In addition, the invasive species plans that were submitted by Constitution only include a three-year monitoring period. As invasive colonization will be encouraged by the very existence of the edge habitat; monitoring will need to occur throughout the service lifetime of the ROW.

CO69-15

- The plan indicates a commitment the development of vegetation restoration measures for the operation of the ROW that will benefit early-successional species. As the primary vegetative result of significance from the construction of the pipeline will be the conversion of late successional forest vegetation to early successional plant communities, this commitment if of limited value. Early successional plant communities are common across the Eastern U.S. as a result of widespread forest fragmentation. Late successional systems, however, require a long-term investment in both landscape management and protection. They are relatively scarce in comparison.

CO69-16

- The plan fails to identify any strategy for the restoration of the upland forest systems that the proposed pipeline project will disrupt. Instead, monetary payments to fund offset projects are contemplated. The reliance on offsets as the sole mechanism for mitigation of adverse impacts is problematic for a number of reasons.
 - Offsets provide no benefit for the ecosystem that has been affected. Reliance on offsets only ignores the fact that the disturbance and elimination of forest habitat along the project route will have a cumulative impact on the ecosystems. For example, disturbance of upland forest within a given watershed has direct implications for both terrestrial and aquatic systems. The removal of mature forest cover will change soil moisture and forest floor light levels resulting in ecological cascades across a variety of habitats. Changes in runoff rates and groundwater recharge capability as a result of tree removal will affect both base and peak flows in streams. Higher peak flows result in greater erosion and downstream flooding. In addition, stream chemistry modifications can be expected as forest cover is replaced by herbaceous growth.
 - Funding of off-site projects does not compensate the affected forest landowners for the loss of forest value and ecosystem services that will result from the conversion of these systems to non-forest or degraded forest. In addition, affected landowners will not be compensated for maintenance costs associated with management and/or restoration of newly created edge habitat. For instance, Constitution has indicated in their invasive species plans that they will not treat areas off of the ROW for invasive plants. Yet, the creation of edge habitat will drive biological invasion of adjacent properties for the entire service life of the corridor. Adjacent landowners will be forced to bear the costs of future suppression efforts or risk the damage caused by the invasion of non-native species.
 - The proposed level of compensation funding remains "to be determined" and will be based upon "an average raw land value in the Project area." Plan at 5-4. This grossly

CO69-14

See the response to comments CO69-7 (vegetation restoration) and FA6-10 (invasive species monitoring).

CO69-15

See the response to comment CO69-7 regarding vegetation restoration. We recognize that existing late-successional tree species could be replaced by early-successional species in areas outside of the maintained permanent right-of-way following construction. We also recognize that early-successional species may be best adapted to colonize and stabilize recently disturbed conditions.

CO69-16

Section 5 of the preliminary Plan includes Constitution's proposed impact avoidance and minimization measures. Off-site compensatory mitigation for unavoidable impacts is a well-established process for impacts on federally regulated resources, for example such as for impacts on waterbodies and wetlands under Section 404 of the Clean Water Act. In this case, the preliminary Plan is following a similar mitigation process, although impacts on upland forests are not federally regulated.

See the response to comments CO1-4 (runoff and erosion), CO41-54 (stream chemistry), and CO41-55 (light penetration and soil moisture) regarding forest cutting and impacts. Compensation for landowners that would be affected by the project is discussed in section 4.8.2 of the EIS. See the response to comment FA6-10 regarding invasive species monitoring. The proposed level of funding for conservation measures will be determined in coordination with the participating agencies. See the response to comment CO69-12 regarding the indirect effects of the clearing of forest interiors.

COMPANIES AND ORGANIZATIONS

CO69 – Earthjustice (cont'd)

S-954

CO69-16 cont'd	<p>underestimates the value of the ecosystem services and the forest structure that will be lost due to project construction and operation. Interior forest represents decades of accrued equity in landscape development and plant growth; this temporal investment has great ecological value that is not comparable to that of raw land.</p> <ul style="list-style-type: none"> ○ As discussed above, the plan fails to fully account for the loss of interior forest acreage in its computation of project-related effects on upland forest and migratory bird habitat. The proposed compensation outlined in Table 4 discounts the edge impacts that will be created via the liquidation of 675.27 acres of forested land.
CO69-17	<p>II) April 28, 2014 Letter to USFWS</p> <ul style="list-style-type: none"> • Constitution's letter states that the company determined that reducing the permanently maintained easement and/or the construction workspace in upland forest is "infeasible" due to safety and operational concerns. However, as discussed above, the company has acknowledged that smaller workspaces and ROW widths will be utilized in wetland systems. Thus, the conclusion of infeasibility is unjustified. • Constitution claims that replanting of the temporary workspace areas within interior forest would not eliminate the edge effect associated with the new easement and would not significantly improve the migratory bird habitat. Replanting would, in fact, accelerate the establishment of desirable forest species and the timeframe for achieving canopy closure (the shading of the forest floor via tree cover). This would not only reduce the penetration of the edge effect into adjacent forest systems, it would reestablish the species composition displaced by the deforestation activities in those areas. Allowing these workspaces to be abandoned to unmanaged successional processes will, as previously stated, likely result in the establishment of poor quality, undesirable species and invasive organisms. • Constitution states, "the Plan provides Constitution's proposed upland forest minimization measures and preservation activities to ensure that the Project results in a net-benefit to the resources." No documentation exists within any of the project plans submitted by Constitution to FERC demonstrating a "net" benefit to the forest resources in the region. In fact, as proposed, a net loss of upland and interior forest is assured.
CO69-18	<p>III) Recommendations</p> <ul style="list-style-type: none"> • The convoluted computation of acres of upland forest impacted, and the corresponding classification of forest areas into "high", "moderate", and "low" valuation categories, should be rejected. Instead, FERC should require Constitution to produce a complete forest impact analysis that compares acres of interior forest prior to disruption to acres of interior forest after disruption. This accounting for interior forest loss should include the acreage impacted from edge effects on all interior forest blocks.

CO69-17

See the responses to comments CO69-2 (right-of-way width), CO69-7 (re-planting of trees), and FA6-10 (invasive species). Constitution is currently proposing to mitigate for approximately 1,549 acres of upland forest habitat distributed among three categories (high and moderate value, plus indirect impacts on high value habitat). The proposed mitigation would compensate for actual, total direct project impact of approximately 1,025 acres during construction and approximately 471 acres during operation. These overall forest impacts would include approximately 440 acres of interior forest during construction and 218 acres of interior forest permanently eliminated during operations. Our assessment of the Plan is provided in sections 4.5 and 4.6.1 of the final EIS. See also the response to comment CO13-1.

CO69-18

The commentator's opposition to the Preliminary Migratory Bird and Upland Forest Plan is noted. The final mitigation plan, habitat categories, and compensation process will be developed in coordination with the FWS, the PGC, the PADCNr, and the NYSDEC and will be reviewed and assessed by the FERC. See the responses to comments CO69-13 (access roads), FA6-10 (invasive species), CO69-7 (re-planting of trees), and CO69-2 (right-of-way width). The process for monitoring the success of re-vegetation is prescribed in section V.D of Constitution's Upland Erosion Control, Re-vegetation, and Maintenance Plan, which is based on the FERC's standard.

COMPANIES AND ORGANIZATIONS

CO69 – Earthjustice (cont’d)

CO69-18
cont’d

- The evaluation of environmental impacts of the project and any plan for mitigation of such impacts should address the acreage lost from temporary access roads and the associated edge effects.
- In-situ restoration plans for all temporary workspaces and temporary access roads should be developed that include provisions for long-term management and metrics for plant establishment, percent canopy cover, and species composition.
- The Upland Forest Plan should include provisions for invasive suppression within the affected edge zones for the useful service life of the ROW.
- Specific documentation should be provided justifying the expanded ROW maintenance width requested in upland systems as opposed to wetland systems.
- Any formula for determining off-set payments must fully integrate the ecosystem services value of mature forest cover and should properly compensate affected forest landowners for the loss of these services.

As written, I find the Constitution Pipeline Preliminary Migratory Bird and Upland Forest Plan to be grossly inadequate with respect to accounting for and mitigating the ecological impacts to forested systems along the proposed project route. After reviewing my comments and recommendations, please do not hesitate to contact me for further clarification.

Sincerely,

Kevin Heatley, LEED AP
Restoration Ecologist
Hughesville, PA 17737

S-955

COMPANIES AND ORGANIZATIONS

CO70 –Hudson Highlands Environmental

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July 2, 2014

Re: OEP/DG2E/Gas 4
Constitution Pipeline Company, LLC
Constitution Pipeline Project
Docket No. CP13-499-000

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
Washington DC 20426
Re: Docket No. CP13-499-000
Constitution Pipeline

cc: US Army Corps of Engineers
The FERC New York District, CENAN-OP-R
888 First Street NE, Room 1A Upstate Regulatory Field Office
Washington, D.C. 20426 1 Buffington Street, Bldg. 10, 3rd Floor

Dear Ms. Bose:

CO70-1

I am writing to comment on the recent analysis by Constitution Pipeline of the potential route alternatives to avoid the lands managed by the Henry S. Kernan Trust and their associated and adjoining wetlands.

THE INITIAL ANALYSIS WAS FALSE AND MISLED THE PUBLIC

On May 14, 2014, FERC formally requested that Constitution Pipeline (CP) provide a comparative analysis of six specific alternative routes proffered by Bagdon Environmental (BE) and two alternative routes proffered by Hudson Highlands Environmental Consulting (HHEC). Subsequently, FERC also sent out notices to property owners potentially affected by these eight alternative routes so that they could consider and comment on the potential environmental impact of these routes.

In its initial response, CP indicated that it had analyzed 13 alternative routes to avoid the referenced property. However, despite FERC's very specific instructions, CP did not analyze the eight routes as directed, but rather examined 11 routes of their own fabrication and modified versions of the two routes suggested by HHEC. The six BE routes were not considered at all.

CO70-1

The comment regarding Constitution's analyses of minor route variations, initially including some that were not specifically requested by the FERC, is noted.

COMPANIES AND ORGANIZATIONS

CO70 –Hudson Highlands Environmental (cont'd)

20140702-5124 FERC PDF (Unofficial) 7/2/2014 2:27:48 PM

Ms. Kimberly D. Bose, Secretary
July 2, 2014

CO70-1
cont'd

This greatly misled property owners, especially when visited by CP representatives bearing maps of proposed routes that they falsely referred to as the "Kernan Alternative". Presumably, as the routes considered by CP and those routes that were the subject of the FERC notification differed so greatly, these site visits included property owners who never received any notification and were likely alarmed to learn that their property was being "considered" for an alternative route.

This situation prevailed during the entire limited period that was established to receive comments on these new alternatives, and therefore all comments received were submitted within a confusing atmosphere where FERC had given notice on one set of alternatives, and CP provided analyses on a completely different set of alternatives. The affected property owners and other members of the public were therefore deprived of having correct information and analysis upon which to base their comments, essentially nullifying the value of those comments.

CO70-2

BOTH ANALYSES FAILED TO CORRECTLY ANALYZE THE HHEC ROUTES

CP routes 6.1 and 6.2 are based on the potential routes proposed by HHEC, but modifications to the routes in the CP versions of these routes increase the number of individual parcels impacted, and appear to also impact additional areas of wetlands. The impact analysis provided by CP therefore incorrectly calculates a higher level of adverse impact than that anticipated in the design of the HHEC proposed routes. In the newly submitted analysis on June 19, CP states, "Routes 1 and 2 were equivalent to Routes 6.1 and 6.2 submitted to FERC on June 3, 2014 and were not further assessed." As noted, the routes are not equivalent, and this statement is incorrect. A corrected analysis is necessary to compare accurately the environmental impact of the alternative routes.

CO70-3

THE ANALYSIS LACKS ANALYSIS

In CP's analysis, the results are provided solely in tabular form with no insight into or explanation of the methodology, assumptions, calculations used in their analysis or the conclusions that are drawn based on that analysis. This makes it nearly impossible to offer any thoughtful, meaningful comment on this analysis.

For instance, the tabular analysis indicates that Routes 6.1 and 6.2 cross a "lake". Where is this lake? Is the location across a lake the result of the noted route modifications from the route HHEC proposed? Is this perhaps within the propane gas pipeline ROW portion of the routes? If so, has this lake already been impacted by the existing pipeline, or is this a new encroachment? If it is a new encroachment adjacent to the propane gas pipeline, can it be mitigated or entirely avoided by a design change? If it is within an area already impacted by the propane gas pipeline, the existing impact should be noted, and any impact not directly attributable to the placement of the Constitution Pipeline eliminated from the analysis. In short, an adequate, useful "analysis" of the alternative routes requires more than simply a single word or a number in a table.

Page 2

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www.HudsonHighlandsEnviro.com E-mail highlands144@gmail.com

CO70-2

We concur that there are some differences between the routes depicted by the Kernan Land Trust and its agents / the routes depicted by the FERC in its May 29, 2014 notice to landowners and the routes depicted by Constitution in its responses dated June 3 and June 19, 2014. However, these differences are relatively minor; there is no evidence that they were purposely adjusted by Constitution to affect the outcome of the analyses, and we recognize that it is very likely that any of the minor route variations would have to be adjusted and fine-tuned to avoid site-specific resources if they were selected for more detailed analysis or for adoption.

CO70-3

The comment about Constitution's analysis is noted. Using the data in the tables, as well as the maps depicting aerial photography and topography, the FERC staff performed its own analyses. The mapping provided allows identification of specific features along the routes, which can be supplemented with other mapping tools. The relative quality of habitats, such as those that may be previously disturbed due to an adjacent pipeline easement, can also be assessed using the data and mapping.

S-957

COMPANIES AND ORGANIZATIONS

CO70 –Hudson Highlands Environmental (cont'd)

S-958

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Ms. Kimberly D. Bose, Secretary
July 2, 2014

CO70-3
cont'd

Also inherently absent from an assessment that presents only numerical data in tabular form is any discussion of the *quality* of the identified resources being impacted. The impact of the pipeline crossing wetlands that have already been disturbed and therefore may have been partially filled or have invasive species such as Phragmites and purple loosestrife is not as critical as would be the disturbance of a previously undisturbed, pristine wetland system that supports only native vegetation, including rare species, orchids, and carnivorous plants.

Similarly, while the tabular analysis does make a distinction between impacts on edge forest and interior forest, there is no indication of the ramifications of this distinction. The proposed route through the property of the Kernan Trust would fragment one of the largest blocks of unfragmented forest in northern Delaware County. The adverse impact this represents upon an important and fast disappearing type of wildlife habitat, as well as the disruption of a rare remaining example of a completely native plant community, can not be assessed by sheer acreage calculations in a table. Indeed, the avoidance of this unfragmented forest is one of the primary purposes for the consideration of alternative routes around the property. Yet, with the sole exception of a numerical calculation of impacts on interior forest, this point is completely absent from the analysis conducted by CP.

CO70-4 A TRUE COMPARITIVE ASSESSMENT OF WETLAND IMPACTS IS CRITICAL

Another of the primary purposes to be achieved in developing an alternative route around the Kernan property is to avoid adverse impacts upon a high-value wetland system. CP has already disclosed in the DEIS that their preferred route will impact a significant amount of this same wetland system that they themselves have field located on properties adjacent to the Kernan property. Yet, its analysis indicates that NO wetlands will be impacted by its preferred route. While it is understood that CP does not have similar field data for the alternative routes (although such explanation is not provided by CP), not recognizing the presence of these wetlands is false and misleading. This makes it incorrectly appear that the preferred route has zero wetlands impacts, while by comparison, showing wetlands impacts for the alternative routes. As was revealed by calculations in the DEIS, the table-top analysis found only about 10% of the wetlands that CP itself actually located in the field. Clearly, a table-top analysis is completely inadequate for making a comparative assessment.

Given that the avoidance of these wetlands is a fundamental purpose for even considering these alternatives, developing an analysis that doesn't even recognize their existence renders that analysis not just fundamentally flawed; it is useless. It is critical that any analysis of alternatives around the Kernan property provides FERC with a true assessment of the presence of and impacts upon wetlands.

CO70-5 NEW INVESTIGATIONS OF THE KERNAN PROPERTY REVEAL EXTENSIVE WETLANDS

A recent 40-hour investigation of the area of the Kernan Trust property between the Clapper Lake and Mud Pond wetlands revealed the presence of an extensive system of wetlands. The boundaries of these wetlands have been flagged and located by GPS, supported by collected data that documents the presence of hydrophytic vegetation, hydric soils, and wetland

Page 3

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CO70-4

Typically, the FERC does not require field data for initial evaluations of alternatives. Additionally, it is most appropriate to compare equivalent source types of data in an alternatives analysis, such as all desktop data, as opposed to mixing data types. The use of two different data source types can lead to inaccurate, inappropriate, or unfair comparisons between two routes or scenarios. As of the date of Constitution's analysis, they did not have access to the property for survey, nor had the owner provided data from a field wetland delineation. See the response to comment CO5-6.

CO70-5

The commentator's statement regarding a recent wetland delineation, the claim regarding wetlands present on the property, and a future submittal to the FERC regarding this information is noted.

COMPANIES AND ORGANIZATIONS

CO70 –Hudson Highlands Environmental (cont'd)

S-959

20140702-5124 FERC PDF (Unofficial) 7/2/2014 2:27:48 PM

Ms. Kimberly D. Bose, Secretary
July 2, 2014

CO70-5
cont'd

hydrology. Where these boundaries extend to the property line, they meet boundary flags that were placed by CP consultants delineating other parts of the same wetlands system on adjacent properties, implying an agreement in the interpretation of the in-field wetland conditions with their consultants.

In the case of both the Mud Pond and Clapper Lake wetlands, previously unmapped wetlands encompass fairly wide drainages that feed into the main body of the wetlands. Within these newly mapped areas are a variety of wetland types including hemlock swamp, wet woods, alder swamp, and wet meadow. Most of the newly mapped wetland areas are found along a generally trending NNE-SSW axis between the previously mapped wetlands, implying there may be a fracture trace in the underlying bedrock that provides a subsurface hydrologic connection between Clapper Lake and Mud Pond. This hypothesis is further supported by the identification of a continuous wetland surface connection between the Clapper Lake and Mud Pond wetlands across the drainage divide. Within the wetlands in the immediate area of the drainage divide were in fact several pools of water that were permanent enough to provide habitat for amphibians that were observed during field work.

These new field data therefore indicate that the Mud Pond and Clapper Lake wetlands as shown on the current NYSDEC wetland maps are actually part of a single much larger, very complex and unique wetland system. The different parts of this system are connected on the surface via a continuous area of wetlands, and within the subsurface are hydrologically connected via an apparent fracture trace. The "preferred" route of the Constitution Pipeline would disrupt both the fragile surface connection and the subsurface connection with unpredictable consequences upon the Mud Pond-Clapper Lake wetland system.

Confirmation of the newly located wetland boundaries by the NYSDEC and ACOE is tentatively scheduled for the latter half of July. Once the jurisdictional determination by these agencies has been completed, the confirmed wetland boundaries and supporting documentation will be provided to both FERC and CP.

CO70-6

ANALYSIS DOES NOT CONSIDER THE INTRODUCTION OF INVASIVE SPECIES

As noted, the cleared right-of-way and its on-going maintenance would also disrupt a large block of important unfragmented forest and inevitably introduce exotic invasive plant species into both the uplands and wetlands communities that currently remain remarkably free of such aggressive species. As the alternative routes largely utilize already disturbed lands, invasive species are undoubtedly already present in these areas. Yet, this point is absent from the analysis of the alternative routes comparatively to the proposed route. CP's analysis should take into account the expert opinion by Dr. Bernd Blossey, Director of the Institute of Invasive Species at Cornell University, which was provided to FERC and CP several times by the Kernan Trust, that the location of the proposed pipeline through the Clapper Lake – Mud Pond wetland complex would inevitably cause the introduction of invasive species into these currently pristine wetlands and surrounding unfragmented forest. In part, the opinion expressed by Dr. Blossey includes the following:

"Most significant to me is the assessment of lack of invasive plant species in your surveys on your property, at least along the proposed pipeline route. Absence of invasive species in NY

Page 4

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CO70-6

See the responses to comments FA6-10 and CO5-6. Section 3.4.3 of the EIS has been revised with new information regarding the Kernan Land Trust property and our assessment of potential impact avoidance, minimization, and mitigation measures.

COMPANIES AND ORGANIZATIONS

CO70 –Hudson Highlands Environmental (cont'd)

20140702-5124 FERC PDF (Unofficial) 7/2/2014 2:27:48 PM

Ms. Kimberly D. Bose, Secretary
July 2, 2014

CO70-6
cont'd

wetlands is a rarity, at least outside of the Adirondacks. That in itself is remarkable and unique and is testament to the careful land management your family has engaged in.

"The establishment and spread of invasive species has been studied around the globe and while there is no doubt anywhere that disturbance events, including construction activities, construction equipment and opening up of intact plant communities, are major contributors to the success of invasive species. Your property and particularly the areas between Mud and Clapper Lake are prime examples of habitats and communities that have not suffered from such disturbances and have thus far remained in a pristine state. Protection of habitats that are not invaded by introduced species should receive the highest priority. Nationwide assessments by the National Research Council have shown that restoration of degraded wetlands is nearly impossible and likely to fail. Your property qualifies as such a unique place that I consider it the social responsibilities of those proposing a pipeline construction to avoid the destruction of intact plant communities at all costs if alternatives are available...

"The proposed alternative pipeline routes make enormous sense to me. Not only is there an existing pipeline in the area, other ROWs exist with the ongoing disturbance events already being implemented. Adding this new pipeline to the existing infrastructure should have the highest priority before destroying unique and pristine areas. In my view there is absolutely no justification for the proposed route given the surrounding existing infrastructure."

The full letter from Dr. Blosssey is attached.

If you have any questions regarding the content of this letter, please do not hesitate to contact me via the contact information provided on this letterhead.

Sincerely,



Stephen M. Gross
Principal

cc: Henry S. Kernan Trust
C. Elefant, Esq.

Page 5

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S-960

COMPANIES AND ORGANIZATIONS

CO71 –Earthjustice



July 7, 2014

Via Electronic Filing
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

**Re: Supplemental Comments on Draft Environmental Impact Statement for
Constitution Pipeline and Wright Interconnect Projects,
Docket Nos. CP13-499-000; CP13-502-000; PF12-9**

Dear Secretary Bose:

CO71-1

On behalf of intervenors in the above-referenced proceeding—Catskill Mountainkeeper, Clean Air Council, Delaware-Otsego Audubon Society, Delaware Riverkeeper Network, Riverkeeper, Inc., and Sierra Club (collectively “Intervenors”)—we respectfully submit the following additional comments on the Draft Environmental Impact Statement (“Draft EIS”) for the Constitution Pipeline and Wright Interconnect Projects, issued February 12, 2014 by the Federal Energy Regulatory Commission (“Commission”). As explained in Intervenors’ previous comments on the Draft EIS, the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4331 *et seq.*, and its implementing regulations, 40 C.F.R. §§ 1502.16(a), (b); 1508.7; 1508.8, require that environmental impact statements fully assess and disclose the cumulative environmental impact of a proposed action—that is, the impact “which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R. § 1508.7.

In addition to the shortcomings of the cumulative impact analysis included in the Draft EIS that Intervenors identified in their prior comments, the analysis also is deficient because it does not include any discussion of a major pipeline project that is slated for the same region as its project. (A letter from Constitution notifying Intervenors’ counsel of the new project’s announcement is attached hereto.) According to recent reports, this second proposed pipeline—a Tennessee Gas Pipeline (“TGP”) Company project—would traverse 117 miles from Susquehanna County to Schoharie County, following a similar route as that of Constitution’s project. It would be fair to assume that construction and operation of the TGP project will cause

CO71-1

See the response to comment CO26-18 regarding the TGP) Northeast Energy Direct project. We have updated section 3.3 of the EIS to address the possibility of collocation by Constitution and Northeast Energy Direct and also of a single pipeline for both projects. See the response to comment LA7-5 regarding project need. As stated in section 3.2.2 of the EIS, there is not available capacity on existing pipeline systems in the area to meet the projects’ need.

COMPANIES AND ORGANIZATIONS

CO71 –Earthjustice (cont'd)

CO71-1
cont'd

impacts to the environment similar to those that will be caused by the Constitution Pipeline. Thus, before it can take any final action on the environmental impact of the Constitution Pipeline, the Commission must take a hard look at the combined effects of these two major infrastructure projects and must revise its Draft EIS accordingly to allow for the full public participation that NEPA requires.

In addition, and in light of the similarities of the projects' proposed routes through Pennsylvania and New York, the Commission should consider the feasibility of co-locating the pipelines as part of its alternatives analysis. Furthermore, the Commission should revisit its analysis of the need for the Constitution Pipeline and should expand that analysis to evaluate whether two pipelines with nearly identical routes are in the public interest or are required by the public convenience and necessity. This analysis should go beyond whether the Company has precedent agreements for the project and should, instead, evaluate the existing capacity of pipelines in the region and determine whether upgrades to existing infrastructure could serve the public interest better than new greenfield projects.

For these reasons, the environmental review of the Project remains incomplete and the Commission must revise its analyses of cumulative impacts, alternatives, and need and issue a revised draft EIS for public review and comment prior to proceeding with a decision on Constitution's application for a Certificate of Public Convenience and Necessity.

Respectfully submitted,



Bridget M. Lee

*On behalf of Catskill Mountainkeeper,
Clean Air Council, Delaware-Otsego
Audubon Society, Delaware Riverkeeper Network,
Riverkeeper, Inc., and Sierra Club*

COMPANIES AND ORGANIZATIONS

CO71 –Earthjustice (cont'd)



CONSTITUTION PIPELINE

P.O. Box 14139
Albany, NY 12212
518-982-1637

CO71-1
cont'd

June 16, 2014

Earthjustice
156 William Street
Suite 800
New York, NY 10038

Re: Tennessee Gas Pipeline's Northeast Energy Direct Project

Dear Deborah Goldberg:

As you may have heard, the Tennessee Gas Pipeline (TGP) has announced a separate and distinct pipeline project slated for the same region as the Constitution Pipeline Project. We have heard from many landowners and local officials seeking clarification as to the TGP project and whether that project has any formal or informal relationship with Constitution.

First and foremost, Constitution Pipeline is a completely separate entity from Tennessee Gas Pipeline. We have no business relationship. Constitution Pipeline has not been contacted by or consulted with TGP in their endeavors. As such, we make no representations about their potential project.

We have heard from some landowners that TGP land agents have said that Constitution Pipeline and TGP are working together. This is not accurate and TGP land agents cannot and should not be making any representations as to the Constitution project.

TGP's proposed pipeline is not a competitor for Constitution Pipeline route. According to news reports, TGP is proposing an additional pipeline in the same vicinity as Constitution. Constitution Pipeline maintains our priorities on safety and integrity. Because of this, we have no intent to share the pipeline access rights with TGP.

Constitution Pipeline has not, nor has any intention to share landowner information including, survey access, survey data, right of way acquisition rights, landowner lists, alignment sheets, or other data gathered as part of the our permitting process.

Constitution has submitted its application to the Federal Energy Regulatory Commission (FERC) for a single pipeline. Constitution Pipeline expects the Final Environmental Impact Statement to be submitted

S-963

COMPANIES AND ORGANIZATIONS

CO71 –Earthjustice (cont'd)

CO71-1
cont'd

as complete by FERC in July/August 2014. This is the last step prior to FERC issuing an order for the project.

TGP, on the other hand, must go through a separate and distinct FERC permitting process which is not connected in any way to the pending application of Constitution.

We believe that TGP's pipeline is unnecessary. Additional throughput of the Constitution Pipeline in a (hypothetical) future expansion could be accomplished with compression, minimizing the need for additional facilities. We are certain that all such issues would be thoroughly considered by the FERC and interested parties if and when TGP submits an application to federal regulators.

We have worked hard over the past two years to accommodate the special concerns of the landowners and local communities we will cross. We share the concerns expressed to us by landowners and local officials who have been perplexed by the announcement of a second pipeline project. As we have always contended, we are available to answer your questions; however specifics about TGP's plans should be addressed to its representatives.

We very much appreciate the efforts of landowners and other affected parties who have spent considerable time working out the best solutions to make Constitution Pipeline a reality. Presently, landowners have signed easement rights for over 50% of the right of way. As we approach receiving our final project permits, we will continue to work with remaining landowners with whom we are still negotiating to settle any remaining issues.

Constitution is committed to working with you to ensure that any questions or concerns are promptly addressed. You can find out more about our company by visiting our website at www.constitutionpipeline.com.

If you have any questions about issues raised in this letter or about the Constitution project in general, please contact us at 518-982-1637 or by e-mail at PipelineExpansion@williams.com

Sincerely,



Public Outreach Manager
Constitution Pipeline, LLC

S-964

COMPANIES AND ORGANIZATIONS

CO72 –Pace Environmental

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PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

Attachments associated with this submittal have not been included but can be accessed on FERC's eLibrary http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140707-5086

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SUPERVISING ATTORNEYS

KARL S. COPLAN
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ROBERT F. KENNEDY, JR.

ADMINISTRATORS

MARY BETH POSTMAN
JENNIFER RUHLE

July 7, 2014

**VIA eFiling to FERC in Docket No. CP13-499
VIA email to US Army Corps of Engineers**

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, D.C. 20426

Jodi M. McDonald
Chief, Regulatory Branch
US Army Corps of Engineers
New York District, CENAN-OP-R
Upstate Regulatory Field Office
1 Buffington Street, Bldg. 10, 3rd Floor
Watervliet, New York 12189-4000

**Re: Stop the Pipeline Request for Revision of the DEIS for the
Proposed Constitution Pipeline to Analyze Impacts of
Kinder Morgan's Northeast Energy Direct Project,
Docket Nos. CP13-499 and CP13-502; NAN-2012-00449-UBR**

Dear Secretary Bose and Ms. McDonald:

CO72-1

On behalf of our client, Stop the Pipeline ("STP"), the Pace Environmental Litigation Clinic, Inc. ("PELC") respectfully requests that the Draft Environmental Impact Statement ("DEIS") for the proposed Constitution Pipeline ("CP") be revised to incorporate the impacts of Kinder Morgan's Northeast Energy Direct ("NED") project. It has come to our attention that Kinder Morgan, which owns Tennessee Gas Pipeline ("TGP"), has proposed to add a segment to its Northeast Expansion project to include a "supply pipeline" from Susquehanna County, Pennsylvania to Wright, New York. (See Exhibit 1: Fact sheet and map.) Most of the proposed route in New York State appears to be parallel to the proposed CP. According to maps that were sent to many potentially affected landowners, the two pipelines would be about 100 feet apart. The NED project would be constructed two years after the CP, if both projects were approved as proposed. According to a presentation made on June 5, 2014, TGP intends to gather gas from both the Marcellus and Utica shale formations in New York State. (See Exhibit 2: Presentation at the EBC Energy Program, page 5.) On page nine, TGP lists the fact that the "route

CO72-1

See the response to comment CO71-1.

COMPANIES AND ORGANIZATIONS

CO72 –Pace Environmental (cont'd)

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Kimberly D. Bose, Secretary, FERC
Jodi M. McDonald, USACoE
July 7, 2014
Page 2

CO72-1
cont'd

[was] previously reviewed” as an advantage. However the impacts of the proposed NED must be studied by FERC and all of the other involved agencies now.

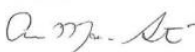
NEPA requires that connected projects be studied together, and all cumulative impacts assessed. (See Exhibit 3: *Delaware Riverkeeper Network v. FERC*, No. 13-1015 (D.C. Cir. 2014).) While the rule against segmentation already applied to TGP’s Northeast Expansion Project, as it would have been transporting gas it received from the CP in Wright, New York to New England, the requirement to study cumulative impacts of two parallel pipelines, to be constructed consecutively, through the very same unspoiled areas, is even greater in light of the D.C. Circuit’s recent decision. The NED project is not speculative. Landowners along the entire route have been contacted by TGP, and surveys have begun. (See Exhibit 4: June 3, 2014 letter and survey form.) In a subsequent letter to landowners and officials, CP claims it is not sharing “confidential” information or working with TGP. (See Exhibit 5: June 13, 2014 letter.) At this point we cannot know whether this is true, or if Kinder Morgan plans to take over the CP project at some point in the future. Either way, the required nexus exists for a complete cumulative impact analysis of both projects in the current environmental review for the “Constitution” pipeline.

For these reasons, as well as all of the reasons set forth in STP’s comments on the DEIS submitted on April 7, 2014, a revised draft environmental impact statement that covers both pipeline projects needs to be issued for public comment.

Respectfully submitted,



Daniel E. Estrin
Supervising Attorney



Anne Marie Garti, Esq.
Legal Volunteer

996-S

COMPANIES AND ORGANIZATIONS

CO73 –Earthjustice

S-967

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UNITED STATES OF AMERICA BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION	
Constitution Pipeline Company, LLC))) Docket No. CP13-499-000
CO73-1	<p>NOTICE OF WITHDRAWAL AND SUBSTITUTION OF COUNSEL FOR CATSKILL MOUNTAINKEEPER; CLEAN AIR COUNCIL; DELAWARE-OTSEGO AUDUBON SOCIETY; DELAWARE RIVERKEEPER NETWORK; AND SIERRA CLUB</p> <p>TO THE COMMISSION, THE APPLICANT, AND ALL INTERVENERS:</p> <p>PLEASE TAKE NOTICE that effective immediately, Moneen Nasmith of Earthjustice hereby substitutes for Bridget M. Lee as counsel for Catskill Mountainkeepers, Clean Air Council, Delaware-Ostego Audubon Society, Delaware Riverkeeper Network, and Sierra Club.</p> <p>Accordingly, in the future, please direct all service upon the above-listed interveners to the following counsel of record:</p> <p>Moneen Nasmith Earthjustice 48 Wall Street, 19th Floor New York, NY 10005 Phone: 212-845-7384 Fax: 212-918-1556 mnasmith@earthjustice.org</p> <p>Deborah Goldberg Earthjustice 48 Wall Street, 19th Floor New York, NY 10005 Phone: 212-845-7377 Fax: 212-918-1556 dgoldberg@earthjustice.org</p>

CO73-1 The mailing list has been updated accordingly.

COMPANIES AND ORGANIZATIONS

CO73 –Earthjustice (cont’d)

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CO73-1
cont'd

Respectfully submitted,

/s/ Moneen Nasmith

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*Counsel for Catskill Mountainkeepers, Clean Air
Council, Delaware-Ostego Audubon Society,
Delaware Riverkeeper Network, and Sierra Club*

Dated: July 17, 2014

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896-S

COMPANIES AND ORGANIZATIONS

CO73 –Earthjustice (cont’d)

696-S

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CERTIFICATE OF SERVICE

CO73-1
cont'd

I hereby certify that I have this day served the foregoing document upon the Applicant in
this proceeding and Interveners.

Respectfully submitted,

/s/ Moneen Nasmith

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*Counsel for Catskill Mountainkeepers, Clean Air
Council, Delaware-Ostego Audubon Society,
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Dated: July 17, 2014

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice



ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

July 18, 2014

VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Re: Additional Information for *Constitution Pipeline*, Docket No. CP13-499

Dear Secretary Bose:

CO74-1 On behalf of Catskill Mountainkeeper; Clean Air Council; Delaware-Otsego Audubon Society; Delaware Riverkeeper Network; Riverkeeper, Inc.; and Sierra Club, intervenors in the above-referenced proceeding, we submit this letter to notify the Federal Energy Regulatory Commission ("FERC" or the "Commission") of the recent decision by the District Court for the District of Colorado in *High Country Conservation Advocates, et al. v. United States Forest Service, et al.*, No. 13-cv-01723-RBJ, 2014 WL 2922751 (D. Colo. June 27, 2014) (attached hereto as Exhibit 1). In *High Country Conservation Advocates*, the court rejected federal agencies' review under the National Environmental Policy Act ("NEPA") because it quantified and touted the benefits of a proposed project while refusing to engage in a feasible analysis of the project's costs. *Id.* at 19.

The court held that the agencies' treatment of the costs associated with greenhouse gas emissions from a proposed project was arbitrary and capricious. *Id.* at 16. The court found that a discussion of the impacts caused by greenhouse gas emissions is not impossible and can be achieved using the social cost of carbon protocol. *Id.* at 17. Indeed, the social cost of carbon protocol "is designed to quantify a project's contribution to costs associated with global climate change." *Id.* By deciding not to quantify the costs of the proposed project at all, "the agencies effectively zeroed out the cost in [the] ... analysis" and therefore failed to satisfy NEPA's requirement to take a hard look at the impacts of the proposed project. *Id.* at 21-22.

We urge the Commission to review the attached decision and apply its holding to the analysis FERC is conducting under NEPA of the impacts of the proposed project being considered under the above-captioned docket. In particular, the impact of the proposed project's greenhouse gas emissions must be quantified by using the social cost of carbon protocol.

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CO74-1

The information regarding the recent decision by the District Court for the District of Colorado in *High Country Conservation Advocates, et al. v. United States Forest Service, et al.*, No. 13-cv-01723-RBJ, 2014 WL 2922751 (D. Colo. June 27, 2014) and the social cost of carbon protocol is noted. See section 4.13 of the EIS for a discussion of the social cost of carbon.

S-970

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Respectfully submitted,



Moneen Nasmith
Associate Attorney

Attachement

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Exhibit 1

S-972

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

CO74-1
cont'd

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No. 13-cv-01723-RBJ

HIGH COUNTRY CONSERVATION ADVOCATES,
WILDEARTH GUARDIANS, and SIERRA CLUB,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE,
UNITED STATES DEPARTMENT OF AGRICULTURE,
UNITED STATES BUREAU OF LAND MANAGEMENT,
UNITED STATES DEPARTMENT OF THE INTERIOR,
DANIEL JIRÓN, in his official capacity as Regional Forester for the U.S. Forest Service’s
Rocky Mountain Region,
SCOTT ARMENTROUT, in his official capacity as Supervisor of the Grand Mesa,
Uncompahgre, and Gunnison National Forests, and
RUTH WELCH, in her official capacity as the Bureau of Land Management’s Colorado State
Office Acting Director,

Defendants, and

ARK LAND COMPANY, INC., and
MOUNTAIN COAL COMPANY, L.L.C.,

Intervenor-Defendants.

ORDER

The North Fork Valley in western Colorado is blessed with valuable resources. The area
hosts several coal mines as well as beautiful scenery, abundant wildlife, and outstanding
recreational opportunities. And as is sometimes the case in rich places like this, people disagree
about how to manage the development of those resources. In the case before the Court, the
plaintiff environmental organizations seek judicial review of three agency decisions that together

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 2 of 36

CO74-1
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authorized on-the-ground mining exploration activities in a part of the North Fork Valley called the Sunset Roadless Area. These exploration activities are scheduled to begin on July 1, 2014. Plaintiffs allege that these three agency decisions failed to comply with the National Environmental Policy Act (“NEPA”) and the Administrative Procedure Act (“APA”) and must be set aside. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

I. BACKGROUND

A. The National Environmental Policy Act (“NEPA”)

The National Environmental Policy Act is one of our country’s foundational environmental statutes. The law, however, does not prescribe any substantive environmental standards per se. Rather NEPA is a procedural statute designed to ensure public participation and transparent decisionmaking by federal agencies. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Before taking major action, NEPA requires federal agencies to prepare an Environmental Impact Statement (“EIS”). 42 U.S.C. § 4332(2)(C). An EIS must take a “hard look” at the potential environmental impacts of the agency’s proposed action. *Robertson*, 490 U.S. at 350; *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 713 (10th Cir. 2009).

“The EIS must also ‘rigorously explore and objectively evaluate all reasonable alternatives’ to a proposed action in comparative form, so as to provide a ‘clear basis for choice among the options.’” *WildEarth Guardians v. U.S. Forest Serv.*, 828 F. Supp. 2d 1223, 1236 (D. Colo. 2011) (quoting 40 C.F.R. § 1502.14). “Reasonable alternatives are those which are ‘bounded by some notion of feasibility,’ and, thus, need not include alternatives which are remote, speculative, impractical, or ineffective. *Id.* at 1236-37 (quoting *Utahns for Better*

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 3 of 36

CO74-1
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Transp. v. U.S. Dep't of Transp., 305 F.3d 1152, 1172 (10th Cir. 2002) and citing *Custer Cnty. Action Ass'n v. Garvey*, 256 F.3d 1024, 1039-40 (10th Cir. 2001)). "The EIS also must briefly discuss the reasons for eliminating any alternative from detailed study." *Id.* (citing 40 C.F.R. § 1502.14(a)). To determine whether alleged deficiencies in an EIS merit reversal, the Court applies "a rule of reason standard (essentially an abuse of discretion standard)." *Utahns for Better Transp.*, 305 F.3d at 1163.

NEPA does not require an explicit cost-benefit analysis to be included in an EIS. 40 C.F.R. § 1502.23 ("[T]he weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations"); see also *Oregon Natural Res. Council v. Marsh*, 832 F.2d 1489, 1499 (9th Cir. 1987), *rev'd on other grounds*, 490 U.S. 360; *North Carolina Alliance for Transp. Reform, Inc. v. U.S. Dep't of Transp.*, 151 F. Supp. 2d 661, 692 (M.D.N.C. 2001). However, where such an analysis is included it cannot be misleading. *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446-48 (4th Cir. 1996) ("it is essential that the EIS not be based on misleading economic assumptions"); *Johnston v. Davis*, 698 F.2d 1088, 1094-95 (10th Cir. 1983) (disapproving of misleading statements resulting in "an unreasonable comparison of alternatives" in an EIS).

As an alternative or precursor to an EIS, an agency may prepare an environmental assessment ("EA") to "[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 C.F.R. § 1508.9(a)(1). The EA, while typically a more concise analysis than an EIS, must still evaluate the "need for the proposal, . . . alternatives as required by [NEPA] section 102(2)(E), [and] the environmental impacts of the proposed action and alternatives." 40 C.F.R. § 1508.9(b). If the

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 4 of 36

CO74-1
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agency concludes that the action will not cause significant impacts, it may issue a Finding of No Significant Impact (“FONSI”) and need not prepare an EIS. 40 C.F.R. § 1508.13.

B. Coal Leasing on Federal Land

The BLM manages coal leases underlying Forest Service Land pursuant to the Mineral Leasing Act, 30 U.S.C. § 181 *et seq.* Because the Forest Service retains management authority over the surface lands overlying these leases, the BLM must first obtain the consent of the Forest Service before approving leases. 30 U.S.C. §§ 201(a)(3)(iii), 207(a); 43 C.F.R. § 3425.3(b).

Prior to granting consent, the Forest Service is authorized to impose conditions to protect forest resources. *Id.* To be sure, conservation is not the Forest Service’s sole mission. *The Lands Council v. McNair*, 537 F.3d 981, 990 (9th Cir. 2008) (“Congress has consistently acknowledged that the Forest Service must balance competing demands in managing National Forest System lands. Indeed, since Congress’ early regulation of the national forests, it has never been the case that the national forests were ... to be set aside for non-use.”) (citing *United States v. New Mexico*, 438 U.S. 696, 716 n. 23 (1978)) (internal quotation marks omitted).

The Forest Service and BLM lease modifications are subject to the same dual-agency permitting process. 43 C.F.R. § 3432.3(d). A different set of regulations govern the process of exploring for coal—whether inside or outside of an existing lease. An exploration plan can be approved without a separate license if the area to be explored lies within an existing lease. 43 C.F.R. § 3480. If, however, the area to be explored lies outside an existing lease, exploration requires a separate exploration license. 43 C.F.R. § 3410.

C. The Sunset Roadless Area

The Sunset Roadless Area contains 5,800 acres of relatively undeveloped forest and scrub land in a part of western Colorado called the North Fork Valley. Mount Gunnison and the

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

CO74-1
cont'd

West Elk Wilderness lie to the east. The parties cannot agree about whether the area should be called pristine or disturbed. It appears undisputed that there have been human activities in the area making it less pristine than the nearby West Elk Wilderness Area. *See, e.g.*, FSLeasing-0046963, 0046967.¹ But at the same time the area is undoubtedly wild, relatively empty, and home to diverse flora and fauna. *See* FSLeasing-0046800, -0046987, and -0047275.

Recreational opportunities are available in the area as well, although the parties dispute how many opportunities are available and the quality of those opportunities. At a minimum, there are two trails in the area—the Sunset Trail and Trail 8152—though they do not receive heavy use. FSLeasing-0046955, 0046836 (characterizing the Sunset Trail as “a non-system nonmotorized trail that is mostly overgrown with minimal use by the public”). The area is more popular for dispersed recreational activities. *See* BLM_EP-13602; BLM_EP-13885-86 (noting that the area “is heavily used during hunting season” and nearby areas are “widely used” for dispersed recreation).

Next door to the Sunset Roadless Area sits the West Elk coal mine. This underground mine has been operating since 1981 mostly beneath public lands managed by the Forest Service. *See WildEarth Guardians v. U.S. Forest Serv.*, 828 F. Supp. at 1227.

D. The Parties

Plaintiffs in this case are a collection of non-profit, environmental groups. Since 1977, High Country Conservation Advocates has been operating in the Gunnison area, working to advance its members’ interest in preserving natural values and open space in Gunnison County. [Second Amended Compl., ECF No. 30 at 4.] Plaintiff WildEarth Guardians is a “non-profit

¹ I adopt the citation convention used by the parties in this case. There are four administrative records. I refer to the Forest Service Lease Modifications record as “FSLeasing-xxxx,” the BLM’s Lease Modifications record as “BLM_mods-xxxx,” to the Exploration Plan record as “BLM-EP-xxxx,” and to the Colorado Roadless Rule record as “CRR-xxxx.”

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 6 of 36

CO74-1
cont'd

environmental organization dedicated to protecting and restoring the wildlife, wild places, and wild rivers throughout the American West.” *Id.* These groups participated in the public comment process associated with the Lease Modifications and Exploration Plan challenged in this case. *Id.* at 5. Members of these organizations recreate in the Sunset Roadless Area and nearby public lands; they visit for the opportunity to enjoy the solitude and quiet of the area as well as the opportunity to hike, camp, and observe wildlife. *Id.* Plaintiff Sierra Club, which joined as a plaintiff later in the litigation, is a national environmental non-profit group that shares similar conservation goals as the other plaintiffs in this case. In addition, the Sierra Club is dedicated to “transition[ing] the nation away from coal and toward clean energy solutions.” *Id.*

As explained above, the BLM and Forest Service cooperatively manage coal mining operations in the Sunset Roadless Area. Their decisions authorizing on-the-ground exploration activities—and the resulting harm to plaintiffs’ interests—are the basis for this case. Ark Land Company and Mountain Coal Company (sometimes referred to collectively as “Arch Coal”) are the companies that currently own leases in West Elk Mine and who petitioned for and received the Lease Modification at issue in this case. Arch Coal’s motion to intervene as a defendant was granted on July 8, 2013. [ECF No. 15.]

E. The Agency Decisions

Three interconnected decisions enabled on-the-ground mining exploration in the Sunset Roadless Area. First, in 2012 the Colorado Roadless Rule (“CRR”) superseded the National Roadless Rule (66 Fed. Reg. 3244 (Jan. 12, 2001)) and provided an exemption for temporary road construction or reconstruction associated with coal mining in the North Fork Valley. 36 C.F.R. § 294.43(c)(1)(ix). The CRR represented a trade-off of sorts between extractive industries in Colorado who sought to loosen the restrictions of the National Roadless Rule and

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 7 of 36

CO74-1
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conservationists and environmental groups that wanted to preserve those protections. 77 Fed. Reg. 39,576, 39,576 (July 3, 2012) (noting that the rule strikes “a balance between conserving roadless area characteristics for future generations and allowing management activities within CRAs [Colorado Roadless Areas] that are important to the citizens and economy of the State of Colorado”). Ultimately the CRR extended roadless protections to a vast amount of acreage that was previously unprotected under the national rule in exchange for various concessions from environmentalists. One of these concessions included an exemption for road construction related to coal mining on about 20,000 acres of previously protected land including the Sunset Roadless Area.² The CRR explicitly states that one of its purposes is to facilitate coal mining and exploration in the North Fork Valley. *Id.* It does not directly authorize such activities, however, but explains that any individual project must undergo site-specific environmental analysis and approval.

Second, the Bureau of Land Management approved modifications to leases held by Ark Land Company and Mountain Coal Company, LLC adding new lands to preexisting leases for the West Elk mine. The modification area comprises 1,701 acres out of the 5,800 in the Sunset Roadless Area. FSLicensing-0046963. Ark Coal filed applications for the modifications in early 2009, and the BLM approved them in November 2011. The Forest Service, as the managing agency for overlying lands, consented to these Lease Modifications. The decision to grant the modification was accompanied by an Environmental Assessment (“EA”). Plaintiffs successfully appealed this decision through the Forest Service administrative process, and the agencies began preparing a full EIS on the Lease Modifications. On August 2, 2012, the Forest Service approved the modifications. Plaintiffs filed a second administrative appeal which was denied on

² A helpful, concise history of the CRR can be found in Judge Boasberg’s opinion in *Ark Initiative v. Tidwell*, 895 F. Supp. 2d 230, 233-35 (D.D.C. 2012).

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 8 of 36

CO74-1
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November 7, 2012. FSLeasing-0065327-77. Then it was BLM's turn to approve the modifications, which it did on December 27, 2012. BLM-mods-009831.

Plaintiffs briefly pursued an administrative appeal with the BLM, but withdrew its appeal when the Interior Board of Land Appeals declined to issue a decision within 45 days. *See* 43 C.F.R. § 4.21(b)(4). The lease modifications went into effect on April 1, 2013. That set the stage for the third and final agency decision in this case.

That third decision occurred after Arch Coal submitted a proposed Exploration Plan to the BLM in April 2013. BLM_EP-000096-179. This plan contained details on Arch's planned exploration of the land newly acquired under the lease modification. As relevant to this litigation, Arch plans to build approximately 6 miles of roads and to clear vegetation for several drill pads. Arch will use the resulting exploratory wells to determine the extent of the underlying coal seam and make a decision about whether to extend mining operations into this area. No one knows for sure whether there is recoverable coal in the exploration area. The agencies prepared an EA and approved the plan on June 27, 2013. BLM_EP-016168-215, EP-016219-21, EP-000467. The following day, BLM petitioned the Land Board to put its approval of the plan into full force and effect. That petition was subsequently denied. Plaintiffs filed this suit on July 2, 2013. At the time they included motions for emergency relief. Those motions were withdrawn after Arch promised not to begin exploration activities until the summer of 2014. [ECF No. 27.]

II. PROCEDURAL BACKGROUND

As explained above, plaintiffs initiated this suit in July 2013. The Court granted Arch Coal leave to intervene in the case on July 8, 2013. ECF No. 15. After it became clear that Arch Coal would not begin exploration activities until the summer of 2014, the parties drafted a joint case management plan. Plaintiffs filed their opening brief on March 20, 2014. Shortly

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 9 of 36

CO74-1
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thereafter, plaintiffs became concerned that the Court would not have enough time to rule on the merits of the case before construction began on July 1, 2014 because the merits were not scheduled to be fully briefed until May 2, 2014. Therefore the plaintiffs filed a motion for a preliminary injunction on April 9, 2014 to protect their interests. A third joint case management plan [ECF No. 68] explained the timing crunch and set a May 20 deadline for briefing related to the preliminary injunction. The case was transferred to me on May 15, 2014 at which point I requested that the parties schedule oral argument on the motion for a preliminary injunction. The underlying merits case became ripe for review before the hearing, however, and therefore the merits case became the focus of the hearing on June 19, 2014. The motion for a preliminary injunction is now moot, and I proceed to a decision on the merits of plaintiffs' administrative appeal.

III. ANALYSIS

By law, this Court may only set aside an agency's decision if after a review of the entire administrative record the Court finds that the decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see also Davis v. Mineta*, 302 F.3d 1104, 1111 (10th Cir. 2002).

An agency's decision is arbitrary and capricious if the agency (1) entirely failed to consider an important aspect of the problem, (2) offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise, (3) failed to base its decision on consideration of the relevant factors, or (4) made a clear error of judgment. Deficiencies in an EIS that are mere "flyspecks" and do not defeat NEPA's goals of informed decisionmaking and informed public comment will not lead to reversal.

New Mexico ex rel. Richardson, 565 F.3d at 704 (internal quotation marks and citations omitted).

Plaintiffs bear the burden of proof on the question of whether an agency's decision was arbitrary or capricious. *Citizen's Comm. to Save Our Canyons v. Krueger*, 513 F.3d 1169, 1176 (10th Cir.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 10 of 36

CO74-1
cont'd

2008) (noting that the agency's decision is presumed valid). I am fully aware that the agencies' decisions—as long as they are neither arbitrary nor capricious—are entitled to deference and that this Court cannot substitute its own judgment for the agency's judgment. *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 555 (1978). And I further recognize that “deference to the agency is especially strong where the challenged decisions involve technical or scientific matters within the agency's area of expertise.” *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1246 (10th Cir. 2011) (quoting *Morris v. U.S. Nuclear Regulatory Comm'n*, 598 F.3d 677, 691 (10th Cir. 2010)). But the Court will not “defer to a void.” *Oregon Natural Desert Ass'n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1121 (9th Cir. 2010).

a. Plaintiffs Have Standing to Bring All Claims.

There is a relatively narrow standing issue that must be resolved at the outset of this case. The plaintiff environmental groups undoubtedly have standing to challenge most of the agency decisions in this case, and by and large their standing is uncontested. Arch Coal alone, however, argues that the plaintiffs lack standing to challenge the CRR because the alleged deficiency in the rule—inadequate analysis of impacts from various greenhouse gas (“GHG”) emissions—is unrelated to the concrete harm giving rise to plaintiffs' standing—i.e. harm to recreational values in the Sunset Roadless Area. I find this argument unconvincing and find that plaintiffs have standing to bring each of the claims in this case.

The basic components of standing are well-settled.

First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

CO74-1
cont'd

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992) (internal citations, quotation marks and alterations omitted).

In this case it is apparent that the plaintiffs will suffer an injury in fact if bulldozing begins in the Sunset Roadless Area, that the injury is traceable to the three interrelated decisions by the agencies to open up the area to coal exploration, and that a favorable decision invalidating any one of the rules would prohibit Arch Coal from moving forward with its exploration plan, thereby redressing plaintiffs’ injury. Arch, however, suggests that a proper standing analysis must also trace the concrete injury to the particular legal theory advanced by the plaintiff. In this case, therefore, Arch would like to see plaintiffs demonstrate why the allegedly inadequate analysis of climate change in the CRR will cause harm to plaintiffs’ recreational interests. Because plaintiffs admittedly cannot draw such a line between the alleged deficiency and the particular harm they face, Arch argues they lack standing to bring such a challenge.

This attempt to raise the bar on standing by requiring additional proof beyond injury, causation, and redressability has been rebuffed by other courts including the U.S. Supreme Court. The Court of Appeals for the D.C. Circuit rejected an identical argument last year. In that case, the district court

found [that plaintiffs] lacked standing to raise the argument because they could not demonstrate a link between their members’ recreational and aesthetic interests, “which are uniformly local, and the diffuse and unpredictable effects of [greenhouse gas] emissions.” The district court therefore seemed to require that the specific type of pollution causing the Appellants’ aesthetic injury—here, local pollution—be the same type that was inadequately considered in the FEIS. In this respect, we think it sliced the salami too thin.

WildEarth Guardians v. Jewell, 738 F.3d 298, 306-07 (D.C. Cir. 2013) (internal citations omitted) (citing *Duke Power Co. v. Carolina Envtl. Study Grp. Inc.*, 438 U.S. 59, 78-79 (1978) (holding that, except in taxpayer standing cases, a plaintiff who has otherwise demonstrated

S-983

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 12 of 36

CO74-1
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standing need not demonstrate a nexus between the right asserted and the injury alleged)). The court went on to explain that vacatur of the allegedly deficient FEIS would redress the plaintiff's injury regardless of the "specific flaw" in the agency's decision. *Id.* at 307; *see also WildEarth Guardians*, 828 F. Supp. 2d at 1235 (D. Colo. 2011) (rejecting the idea that a plaintiff in a similar challenge to an agency coal leasing decision "must specifically allege a personalized injury resulting from climate change, rather than from the project itself"). Like these other courts, I find that requiring High Country Conservation Advocates to prove more than injury, causation, and redressability would be inappropriate and lacks precedential support. I find that plaintiffs have standing to challenge the CRR even if their argument that the rule failed to adequately analyze climate change impacts does not share a nexus with the concrete injury to their recreational interests.

b. Lease Modification FEIS.

Plaintiffs allege three NEPA violations in the Lease Modification FEIS: (1) the agencies failed to disclose the impact to adjacent public and private lands in sufficient detail, (2) the agencies failed to disclose the social, environmental, and economic impacts of GHG emissions resulting from the lease modifications, and (3) the agencies failed to analyze direct volatile organic compound ("VOC") emissions associated with methane venting on the modified lease. Overall, as the record demonstrates, the agencies did an excellent job of disclosing the effects of the Lease Modifications and analyzing those effects. Nonetheless, their explanation of the social, economic, and environmental effects of methane emissions from the development of the Lease Modification was arbitrary and appears to have either "entirely failed to consider an important aspect of the problem, . . . offered an explanation for its decision that runs counter to

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 13 of 36

CO74-1
cont'd

the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *New Mexico ex. rel. Richardson*, 565 F.3d at 704.

i. The Lease Modification FEIS Adequately Disclosed Impacts to Adjacent Lands.

By approving the Lease Modifications, the agencies made it possible for Arch to recover nearby coal on adjacent public and private lands that otherwise would have been permanently bypassed. The fact that this additional coal might now be recoverable and might be developed, while not a direct impact of the Lease Modification, is nonetheless a foreseeable indirect impact of the approval. The FEIS discloses the indirect impacts in some detail, but Plaintiffs argue that the level of detail is insufficient to disclose fully the values that would be impacted by the development of adjacent lands.

No one disputes that foreseeable development resulting from an agency decision is an indirect impact that must be analyzed. 40 C.F.R. § 1508.25(c) (requiring the EIS to analyze direct, indirect, and cumulative impacts from a federal action). *See Davis*, 302 F.3d at 1122-23 (characterizing the growth-inducing effect of agency’s approval of a highway project as an indirect impact requiring analysis). There are natural limits to the amount of forecasting that can be done, of course, and agencies are required only to make “a reasonable, good faith, objective presentation of those impacts sufficient to foster public participation and informed decision making.” *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1177 (10th Cir. 1999) (citation omitted). I turn now to the agencies’ discussion of the impacts to adjacent lands.

In this case, the FEIS discloses that development of the modification will lead to the production of 5.6 million tons of coal from adjacent private lands and 3.3 million tons from adjacent federal lands. FSLeasing-0046776 at 0046851. Moreover the document quantifies the

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 14 of 36

CO74-1
cont'd

economic benefits expected from the modifications and extended mine life as approximately \$1,075,102,400 based on an estimated price of \$40 per ton of coal. FSLeasing-0046776 at 0046987-88. As far as the possible impacts to surface resources, the agencies noted that the adjacent lands were to the north and west of the modification area and assumed that the effects on these lands would be proportional to the effects on land within the Lease Modification. FSLeasing-0046917. The FEIS then multiplied the assumed proportion of vegetation loss by what it knew to be the proportions of overlying vegetative cover in adjacent lands likely to be affected by the modification. FSLeasing-0046918 (“For private lands and adjacent parent lease areas, a total of 63 additional acres of vegetation loss is estimated. Of this, there would be approximately 41 acres of oak, 19 acres of aspen, 2 acres of spruce/fir, and 2 acres of shrub types”).³ The agencies explained that more detailed disclosures would be impossible before approval of a more specific mine plan. FSLeasing-0046776 at 0047327 (“At this leasing stage there are no mine plans approved for the private lands as they rely solely on a preliminary design as is the case on the lease modification areas, so it is impossible to determine exactly where, of [sic] if, surface disturbance would occur.”). Regarding subsidence, specifically, several unknowns—such as the thickness of the coal seam and the amount and characteristics of the overburden (the material above the seam)—added further uncertainty to the agencies’ forecasts. FSLeasing-0055550-54.

³ The FEIS also disclosed a variety of other surface effects on adjacent lands. *See generally* FSLeasing-0046851, -0046887-88, -0046898-99, -0046901-51, -0046957-58, -0046981-83, -0046848 (coal production on adjacent private lands), -0046849, -0046887-89, -0046893-94, -0046919-21 (subsidence on private lands), -0046871 (methane drainage wells on private lands), -0046897-900 (soil impacts on private lands), -0046906, -0046909, -0046912 (surface water impacts from subsidence on private land), -0046907-08, -0046910-11, -0046913 (ground water impacts from subsidence on private land), -0046915 (cumulative impacts to water, including activities on private lands), -0046918 (methodology for estimating vegetation impacts on private lands).

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 15 of 36

CO74-1
cont'd

Plaintiffs admit that the FEIS disclosed the fact that mining would take place on adjacent lands, but they argue that the agencies erred by omitting any discussion of the “location and extent” of the mining. [ECF No. 62 at 24.] They wish for something more specific than the general “north” and “west” provided by the FEIS. FSLeasing-0046776 at 0046848. They argue that in order to evaluate properly what environmental values might be affected the agency must disclose details about the likely location of the adjacent mining. Furthermore they challenge the assumption that effects on adjacent private lands would be proportional to the effects on public lands because the private land owners might not be bound by the sorts of environmental constraints facing the agencies.

Plaintiffs claim that the agencies had maps in their possession that could have provided this more detailed information. They cite, for example, a map depicting the modification area that disclosed details like vegetation cover. FSLeasing-0046776 at 0046916. Plaintiffs claim that similar maps for the adjacent lands were in the Forest Service’s possession. FSLeasing-0055539 (Arch Coal’s map of projected mine layout); FSLeasing-0055650 (Forest Service map depicting possible subsidence from the modification).

The Court has reviewed these maps, and they appear to be quite general and speculative. See E-mail from Kathy Welt to Ryan Taylor, FSLeasing-0055540-41 (“The blue projections are the [longwall] panel layouts that are our best estimates based on available drill hole data. The finer, gray line is the maximum panel layout within the lease mod areas should future exploration data from within the lease mod areas show that the panels can/should be extended there.”). Indeed, the Court cannot see how either of these maps could have disclosed any more information than the general effects already disclosed by the agencies.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 16 of 36

CO74-1
cont'd

Moreover, it was reasonable, and not arbitrary, for the agencies to project that the indirect effects on adjacent lands would be similar to the effects within the current lease area. Plaintiffs offer no evidence suggesting that the surface of the adjacent area differs in such a way that subsidence will have substantially different effects on those areas. Their best argument is that perhaps mining operations will be performed in a less sensitive manner without agency oversight. Such speculation is more of a flyspeck than an accusation of arbitrariness or capriciousness. Moreover even if the Forest Service had included its map of projected subsidence, there is no indication that the map would have allowed plaintiffs to better understand the values that would be affected by the expansion. Again, all it depicts is what the agencies already disclosed: that mining on adjacent lands would occur somewhere to the north and west of the existing lease area and that it would be too speculative to try to determine the precise location of surface effects. *See, e.g.*, FSLicensing-0047327-29 (response to comments seeking more detailed analysis of surface effects).

ii. The Lease Modification FEIS Inadequately Disclosed the Effects of GHG Emissions.

While the agencies provided an adequate disclosure of effects on adjacent lands, their treatment of the costs associated with GHG emissions from the mine was arbitrary and capricious. The agencies apparently do not dispute that they are required to analyze the indirect effects of GHG emissions in some fashion, but they contend that their general discussion of the effects of global climate change was sufficient under NEPA. The FEIS, however, justifies this approach with a statement that is incorrect and ignores evidence in the record. And the post-hoc rationales provided by counsel in this case, even if they could save the FEIS, suffer from problems of their own.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 17 of 36

CO74-1
cont'd

One of the foreseeable effects of the Lease Modification approval is the likely release of methane gas from the expanded mining operations. As explained above, an EIS must disclose and evaluate all of the effects of a proposed action—direct, indirect, and cumulative. NEPA further defines impacts or effects to include “ecological[,] . . . economic, [and] social” impacts of a proposed action. 40 C.F.R. § 1508.8(b). The agencies do not argue that they could ignore these effects. In fact, they acknowledged that there might be impacts from GHGs in the form of methane emitted from mine operations and from carbon dioxide resulting from combustion of the coal produced. FSLeasing-0046776 at 0046808 (“Effects on climate change may occur from mining coal which stem from the release of methane . . . and release of CO₂ caused by the burning of coal that is mined”). Beyond quantifying the amount of emissions relative to state and national emissions (FSLeasing-0046874) and giving general discussion to the impacts of global climate change (FSLeasing-0046880), they did not discuss the impacts caused by these emissions. Instead, they offered a categorical explanation that such an analysis is impossible.

Standardized protocols designed to measure factors that may contribute to climate change, and to quantify climatic impacts, are presently unavailable

Predicting the degree of impact any single emitter of [greenhouse gases] may have on global climate change, or on the changes to biotic and abiotic systems that accompany climate change, is not possible at this time. As such, . . . the accompanying changes to natural systems cannot be quantified or predicted at this time.

FSLeasing-0046880.

But a tool is and was available: the social cost of carbon protocol. Interagency Working Group on Social Cost of Carbon, Technical Support Document (Feb. 2010); *see* FSLeasing-0041245 at 0041403, 0041404. The protocol—which is designed to quantify a project’s contribution to costs associated with global climate change—was created with the input of several departments, public comments, and technical models. FSLeasing-0041245 at 0041403,

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 18 of 36

CO74-1
cont'd

0041404-06. The protocol is provisional and was expressly designed to assist agencies in cost-benefit analyses associated with rulemakings, but the EPA has expressed support for its use in other contexts. *See Sarah E. Light, NEPA's Footprint: Information Disclosure as a Quasi-Carbon Tax on Agencies*, 87 Tul. L. Rev. 511, 545-46 & n.160 (Feb. 2013) (noting the EPA recommendation to the State Department to “explore . . . means to characterize the impact of the GHG emissions, including an estimate of the ‘social cost of carbon’ associated with potential increases of GHG emissions” in connection with the State Department’s review of the Keystone XL pipeline).

In case there was any doubt about the protocol’s potential for inclusion in the Lease Modification EIS, the agencies included it in the draft EIS. FSLeasing-0009871 at 0010035-0010040). The draft weighed several specific economic benefits—coal recovered, payroll, associated purchases of supplies and services, and royalties—against two costs: the cost of disturbing forest and the cost of methane emissions from the mine (measured in terms of dollars per ton of carbon dioxide as estimated by the social cost of carbon protocol). FSLeasing-0010040 (coming out to \$6.9 million in impacts from GHG emissions at a price of \$21 per ton of carbon dioxide). The BLM included a similar analysis in its preliminary EA on the Lease Modifications. BLM_mods-7213 at 7261.

As noted above, these attempts at quantification of the Lease Modification’s contribution to the costs of global climate change were abandoned in the FEIS. The analysis was removed, in part it seems, in response to an email from one of the BLM’s economists that pointed out that the social cost of carbon protocol is “controversial.”

Placing quantitative values on greenhouse gas emissions is still controversial. Social cost estimates for a ton of carbon dioxide emitted range from \$5 to over \$800 (Interagency Working Group 2010; F. Ackerman & E. Stanton, *Climate Risks and Carbon Prices: Revising the Social Costs of Carbon*, 2010).

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 19 of 36

CO74-1
cont'd

Considering the 1.23 million tons of carbon dioxide equivalent emissions [from methane] the West Elk mine emits annually, the cost could range from a moderate \$6 million per year to an overwhelming \$984 million per year.

Email of D. Epstein, Economist, BLM State Office to N. Mortenson, Forest Service (July 19, 2012 6:08 PM), *see* FSLeasing-0116520 at 0116526. The final, however, retained the quantification of the *benefits* associated with the Lease Modifications and even added some additional benefits. FSLeasing-0046776 at 0046985-88.

Therefore the FEIS, on its face, offers a factually inaccurate justification for why it omitted the social cost of carbon protocol. A tool existed, and indeed it was in the draft EIS. This justification “runs counter to the evidence before the agency [and] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. . . .” *New Mexico ex rel. Richardson*, 565 F.3d at 704.

Furthermore, this error is more than a mere “flyspeck.” The agencies expressly relied on the anticipated economic benefits of the Lease Modifications in justifying their approval. *See* FSLeasing-0069890 at 0069898) (explaining that the no-action alternative was not chosen because “it does not achieve social and economic objectives in the area. Estimates suggest nearly a billion dollars in lost revenues, royalties, payroll and local payment for goods and services would be foregone by implementing this Alternative”).

Even though NEPA does not require a cost-benefit analysis, it was nonetheless arbitrary and capricious to quantify the *benefits* of the lease modifications and then explain that a similar analysis of the *costs* was impossible when such an analysis was in fact possible and was included in an earlier draft EIS. *Compare* FSLeasing-0046776 at 0046985-88 (final) *with* FSLeasing-0009871 at 0010035-10040 (draft); *see also* 40 C.F.R. § 1502.23; *Hughes River Watershed Conservancy*, 81 F.3d at 446-48 (“it is essential that the EIS not be based on misleading

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 20 of 36

CO74-1
cont'd

economic assumptions”); *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983) (agency choosing to “trumpet” an action’s benefits has a duty to disclose its costs). In effect the agency prepared half of a cost-benefit analysis, incorrectly claimed that it was impossible to quantify the costs, and then relied on the anticipated benefits to approve the project.

The agencies, of course, might have been able to offer non-arbitrary reasons why the protocol should not have been included in the FEIS. They did not.⁴ Any post-hoc rationalizations provided by the agencies in this litigation are irrelevant to the question of whether the agencies complied with NEPA at the time they made their respective decisions. *New Mexico ex rel. Richardson*, 565 F.3d at 704 (“In considering whether the agency took a ‘hard look,’ we consider only the agency’s reasoning at the time of decisionmaking, excluding post-hoc rationalization concocted by counsel in briefs or argument.”).

I believe the agencies’ post-hoc arguments raised in this litigation further illustrate the arbitrariness of their actions. First, as I mentioned above, the agencies argue that the protocol is provisional and designed for rulemakings, not NEPA documents. The Interagency Working Group’s own materials confirm these facts. See FSLeasing-0041405 (“[A]ny effort to quantify and monetize the harms associated with climate change will raise serious questions of science, economics, and ethics and should be viewed as provisional.”); FSLeasing-0041407 (noting that the protocol is “specifically designed for the rulemaking process”). Whether the provisional

⁴ The BLM’s Record of Decision approving the Lease Modification, which came after the Forest Service’s consent to the Modifications and played no role in the earlier decision, does offer a slightly more descriptive explanation for why the protocol was not used. BLM mods-9817 at 9848 (explaining that “the benefit-cost analysis was removed from the FEIS because it was determined not to provide accurate analysis to inform USFS and BLM decisions”). This post-hoc justification by the BLM does not change the fact that the Forest Service ignored evidence before it. The BLM’s explanation also does not explain why the quantified analysis of benefits was retained while the accompanying quantification of costs was omitted. Finally, the BLM’s ROD also fails to explain why, if the protocol was deemed inaccurate, the agency could possibly have been justified in omitting it entirely, thereby effectively setting the cost of those emissions at \$0.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 21 of 36

CO74-1
cont'd

nature or the declaration that the protocol was designed for rulemaking might have served as a non-arbitrary reason for removing the protocol from the draft is a hypothetical question that the record does not present. I will note, however, that even had such reasons been included, they do not explain why these agencies believed the protocol was inaccurate or not useful in this instance. Likewise, even if the agencies had argued the protocol was controversial because it is imprecise, the only evidence in the record that appears to support that rationalization is the economist's email noting that there is no scientific consensus about the exact dollar amount to assign to carbon emissions. *See supra* Email of D. Epstein, Economist, BLM State Office to N. Mortenson, Forest Service (July 19, 2012 6:08 PM). As he noted, there is a wide range of estimates about the social cost of GHG emissions. But neither the BLM's economist nor anyone else in the record appears to suggest the cost is as low as \$0 per unit. Yet by deciding not to quantify the costs at all, the agencies effectively zeroed out the cost in its quantitative analysis. *See Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (holding that NEPA requires agencies to analyze the effects of its actions on global climate change); *id.* at 1200 (finding it arbitrary and capricious to assign a cost of \$0/ton to emissions when none of the identified estimates was that low); *Border Power Plant Working Grp. v. U.S. Dep't of Energy*, 260 F. Supp. 2d 997, 1028-29 (S.D. Cal. 2003) (same).

Second, the agencies cite cases where courts upheld decisions to omit quantitative analyses of the effect of a project's GHG emissions in favor of a more generalized qualitative analysis of those effects. But in two of those cases, the protocol was never suggested as a possible tool, and the courts appear to have based their holdings, at least in part, on the fact that no such tool existed at the time. *See WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013) ("Because current science does not allow for the specificity demanded by the

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 22 of 36

CO74-1
cont'd

Appellants, the BLM was not required to identify specific effects on the climate in order to prepare an adequate EIS.”); *WildEarth Guardians v. U.S. Forest Serv.*, 828 F. Supp. 2d 1223, 1240 (D. Colo. 2011) (“WildEarth has not identified any method in the record (or elsewhere) that would enable the Forest Service to describe with particularity how the project would contribute to overall climate change.”). The other cases involved alleged deficiencies that are not at issue in this case. *See Barnes v. U.S. Dep’t of Transp.*, 655 F.3d 1124, 1139, 1140 (9th Cir. 2011) (upholding an EIS that did not analyze climate effects “specific to the locale” because such an analysis is impossible); *Audubon Naturalist Soc’y v. U.S. Dep’t of Transp.*, 524 F. Supp. 2d 642, 708 (D. Md. 2007) (upholding an EIS that did not adopt mitigation measures for climate change effects). I am not persuaded by these cases, or by anything in the record, that it is reasonable completely to ignore a tool in which an interagency group of experts invested time and expertise. Common sense tells me that quantifying the effect of greenhouse gases in dollar terms is difficult at best. The critical importance of the subject, however, tells me that a “hard look” has to include a “hard look” at whether this tool, however imprecise it might be, would contribute to a more informed assessment of the impacts than if it were simply ignored.

In short, the agencies might have justifiable reasons for not using (or assigning minimal weight to) the social cost of carbon protocol to quantify the cost of GHG emissions from the Lease Modifications. Unfortunately, they did not provide those reasons in the FEIS, and their post-hoc attempts to justify their actions, even if the Court were permitted to consider them, are unpersuasive. Therefore I find that the FEIS’s proffered explanation for omitting the protocol was arbitrary and capricious in violation of NEPA.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 23 of 36

CO74-1
cont'd

iii. The Lease Modification FEIS Adequately Considered the Effect of Possible VOC Emissions.

Plaintiffs also claim the FEIS devoted insufficient attention to the possibility of volatile organic compound (“VOC”) emissions from the methane wells⁵ that would almost certainly be drilled as a part of the Lease Modification. Methane itself is not a precursor to VOCs, but hexane, propane, and a variety of other chemicals that often accompany coal-bed methane do have the potential to create VOCs. 40 C.F.R. § 51.100 (s)(1). The agencies acknowledged that VOC pollution is a “key” issue, but they made no effort to quantify potential VOC pollution in the FEIS. BLM_mods-9817 at 9826; *see also* BLM_mods7213 at 7222 (preliminary EA); FSLeasing-0046776 at 0046872-73.

The parties devote several pages of briefing to this issue. In a nutshell, the defendants argue that VOC emissions are highly variable; that existing data (which are sparse and relatively old) suggest that regardless of the variability those emissions are low; and that the only evidence suggesting emissions may be significant and worthy of additional study is the plaintiffs’ faulty mathematical extrapolation using the old data. In response, the plaintiffs claim that their math is reasonable, existing facilities are unlikely to detect whether local VOC emissions are high, and in any event, the agencies have an obligation to go out and collect more data to determine whether VOC emissions are significant.

Just because the agencies called VOC pollution a “key” issue does not mean VOC pollution is likely to be significant. The agencies also offered several seemingly non-arbitrary reasons why the existing data are too variable and the emissions are too low to be useful in

⁵ These methane wells are designed to vent methane from the underground mine for safety reasons. They are unrelated to the exploratory wells Arch plans to drill in order to determine the extent of the underlying coal seam.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 24 of 36

CO74-1
cont’d

modeling the effect of the Lease Modifications. FSLeasing-0046873, -0047305–07 (VOC concentrations too variable and too low for accurate modeling). The agencies also note that nearby air monitoring stations have not revealed any local exceedances of VOC limits. FSLeasing-0046857–58. Given that the rate of mining is expected to remain the same, the agencies concluded that VOC emissions were unlikely to change. *Id.* Moreover, the disagreement between the agencies and plaintiffs about the accuracy of plaintiffs’ mathematical forecasting based on the old data from West Elk Mine strikes this Court as precisely the type of technical disagreement where deference to the agency is most important. *Cf. Wyoming*, 661 F.3d at 1246.

After deferring to the agencies’ conclusions that current data do not support the modeling that plaintiffs request, the only remaining issue is whether the agencies were under an obligation to obtain additional information on VOC emissions. *See* 40 C.F.R. § 1502.22(a) (stating that an agency “shall” obtain additional information if it “is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant”). The agencies explain that obtaining more data on VOC emissions would not be essential to a choice among alternatives given that there is no evidence (with the exception of plaintiffs’ disputed extrapolations) that emissions could be significant if the Lease Modifications were approved. Plaintiffs suggest that if the data were not essential, the agency would nonetheless be required to make a set of explicit findings to that effect. But strict, technical compliance with Section 1502.22 has never been required as long as other information in the agency documents reveals that the missing information is not essential. *See Colo. Envtl. Coal.*, 185 F.3d at 1172–73 (courts are “unwilling to give a hyper-technical reading of [40 C.F.R. §1502.22] to require the [agency] to include a separate, formal disclosure statement in the environmental impact statement to the effect that . . .

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 25 of 36

CO74-1
cont'd

data is incomplete or unavailable”) (citation omitted); *WildEarth Guardians*, 828 F. Supp. 2d at 1240 (agency satisfied Section 1502.22 where it stated that additional information on climate impacts was unavailable but that available information indicates impacts would not be significant). Here, the rest of the record, including the absence of any local exceedances and the relatively low levels of VOC emissions from the old data, indicates that VOC pollution will not be significant, and I find that the agency did not act arbitrarily by deciding not to obtain additional evidence of VOC emissions.

c. Colorado Roadless Rule FEIS.

Plaintiffs allege three NEPA violations in the Colorado Roadless Rule: (1) the agencies failed to disclose GHG pollution from the operation of mines that would occur pursuant to the rule, (2) the agencies failed to disclose GHG pollution from combustion of coal from the North Fork Valley exemption, and (3) the agencies failed to address, acknowledge, or respond to an expert report criticizing the agencies’ assumptions about GHG pollution from the exemption.

Before delving into the details of the CRR, I note that the rule appears to be the product of exactly the kind of collaborative, compromise-oriented policymaking that we want in America. Broadly speaking, the CRR balances important conservation interests with the also important economic need to develop natural resources in Colorado. Not everyone got what they wanted out of the rule, but perhaps that is a sign that the political process worked as intended. All of this, however, is more or less beside the point in this litigation. The narrow question this Court must answer is whether the CRR and the North Fork exemption comply with NEPA’s disclosure and analysis requirements. The specific issue is whether the agencies took a “hard look” at the rule’s contribution to climate change, not whether the rule is a good idea or a bad idea. For the reasons that follow, I find that the agency failed to take a hard look at these effects,

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

CO74-1
cont'd

notwithstanding the fact that the CRR appears to be a generally thorough, well-reasoned compromise.

i. The CRR FEIS Failed to Disclose the GHG Emissions from Mine Operation.

The CRR states that increased methane emissions are a foreseeable result of the rule. CRR-0154023 at 0154161. The agencies nonetheless declined to quantify these emissions or analyze their impacts. The agencies justified this choice by arguing that mining activity under the rule is speculative, and emission rates depend on mine-specific factors that will not be understood until exploration occurs. CRR-0153244 (preparation of emissions inventories not feasible). Instead, the agencies used a ranking of one to four stars to compare the potential GHG emissions between the alternatives proposed by the CRR. CRR-0154023 at 0154169-71.

As plaintiffs point out, however, the proffered explanation that future activities are too speculative to analyze is belied by the agencies' decision to include detailed projections and analysis of tax revenue, employment statistics, and other environmental interests. CRR-0154023 at 0154350. It is arbitrary to offer detailed projections of a project's upside while omitting a feasible projection of the project's costs. *See Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1097 (D.C. Cir. 1973); *Sigler*, 695 F.2d at 979 ("There can be no 'hard look' at costs and benefits unless all costs are disclosed."). In a nutshell, the agencies cannot claim that they are unable to predict the impacts of methane emissions because activities occurring under the rule are too speculative and then turn around and calculate down to the job and the nearest \$100,000 the economic impacts of the rule.⁶

⁶ The agencies also object to plaintiffs' desired analysis by suggesting that the FEIS focused primarily on local and regional costs and benefits and that including an inventory of GHG emissions would inappropriately refocus the cost analysis on global costs. The careful quantification of economic benefits did, however, include regional and national benefits. CRR-0154352-59 (quantifying contributions to state

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 27 of 36

CO74-1
cont'd

The agencies also claim that the task of projecting emissions from mine operations under the CRR would be too complex. However, the agencies' own projected coal removal and associated economic analysis in the FEIS was based on existing data from only three mines—West Elk, Bowie #2, and Elk Creek. CRR-0154023 at 0154102. According to the FEIS, these three mines are the only ones that will be expanded under the rule. CRR-154023 at 0154348. The agencies already possess data on methane emissions from these three mines. CRR-0154023 at 0154166. This explanation, therefore, appears to be nothing more than an ipse dixit.

Of course, mine-specific emissions factors were separately offered as a potential excuse for not projecting GHG emissions. However, “[r]easonable forecasting and speculation is . . . implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as ‘crystal ball inquiry.’” *Scientists’ Inst. for Pub. Info.*, 481 F.2d at 1092. Such projections were possible as demonstrated by an expert opinion that used data from existing North Fork mines to extrapolate expected emissions under the extended mine lives enabled by the CRR. Power Report, CRR-0137587 at 0137603. The agencies made similar forecasts based on existing data in earlier litigation surrounding the West Elk Mine, undercutting the argument that such forecasts are impossible. *WildEarth Guardians*, 828 F. Supp. 2d at 1231. Therefore, the decision to forgo calculating the reasonably foreseeable GHG emissions associated with the CRR was arbitrary in light of the agencies' apparent ability to perform such calculations and their decision to include a detailed economic analysis of the benefits associated with the rule.

and federal tax coffers); CRR-0154347-52 (quantifying induced economic benefits to Colorado and the United States). The plaintiffs are not asking the agencies to quantify the global costs associated with the increased GHG pollution resulting from development under the CRR; they merely request an inventory of the quantity of the gases that are likely to be released. This request does not skew the analysis.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont’d)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 28 of 36

CO74-1
cont'd

ii. The CRR FEIS Failed to Disclose the GHG Emissions Resulting from
Combustion of North Fork Valley Coal.

Plaintiffs also object to the CRR FEIS’s omission of any estimate of GHG emissions associated with combustion of coal. They argue that the agencies’ proffered explanations are unsupported by the record and therefore arbitrary. Those explanations were that 1) power plants have varying degrees of efficiency, and therefore any prediction about carbon emissions associated with combustion would be speculative, 2) currently unavailable technology like carbon capture and sequestration might be widely adopted by the time the coal is burned, and 3) the overall amount of coal consumed by the marketplace would remain unchanged because there are perfect substitutes for North Fork Coal. CRR-0154023 at 0154170-71.

I agree with plaintiffs that these explanations are unsupported by the record. First, it makes no sense for the agencies to claim that it is too speculative to predict coal combustion emissions data under the CRR. The agencies projected emissions from future mining and coal combustion in other situations, like the West Elk Lease Modification FEIS. *See* FSLicensing-0046876–78. The agencies attempt to distinguish projections associated with individual leases by arguing that

it is one thing to consider the potential combustion of coal projected to be produced from identified leases, as in the cases cited by Plaintiffs, but quite another to project the effects of the combustion of coal that may or may not be produced over a wide area from mines that may or may not be developed simply by virtue of a broad rule governing road construction—which is the analysis Plaintiffs demand here.

Fed. Def.’s Response Br., ECF No. 72 at 35. This attempt misses the mark. The agency cannot—in the same FEIS—provide detailed estimates of the amount of coal to be mined (CRR-0154023 at 0154112-13) and simultaneously claim that it would be too speculative to estimate

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 29 of 36

CO74-1
cont'd

emissions from “coal that may or may not be produced” from “mines that may or may not be developed.” The two positions are nearly impossible to reconcile.

The only plausible difference between the ability to forecast emissions under the Lease Modifications and forecasting under the CRR is possible variations in powerplant efficiency. But this possibility did not stop the agencies from making estimates of emissions from coal produced by the West Elk mine in the Lease Modifications. And indeed, West Elk is one of only three mines identified for possible development under the CRR. CRR-0154023 at 0154102. There is no reason to believe that variations in powerplant efficiency posed no obstacle to making reasonable estimates of emissions associated with the Lease Modifications but that those same variations in efficiency posed an insurmountable hurdle to making estimates from coal combustion associated with the three identified mines in the North Fork exemption.

Second, the agencies’ contention that new technology might reduce carbon emissions from future coal combustion strikes this Court as anything but a “hard look.” The agency cannot rely on unsupported assumptions that future mitigation technologies will be adopted. *Cf. New York v. Nuclear Regulatory Comm’n*, 681 F.3d 471, 478-79 (D.C. Cir. 2012) (finding a NEPA violation where the agency decided to ignore future impacts based only on “reasonable assurance[s]” that the impacts would be avoided later); *see also Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1381 (9th Cir. 1998) (holding that an EIS discussion of mitigation violated NEPA in part because it was “not clear whether any mitigation measures would in fact be adopted”).

Third and finally, the agencies argue that the same amount of coal will be burned whether or not the CRR exempts the North Fork Valley. The agency concluded that there would be perfect substitution between coal provided by the North Fork Valley and coal mined elsewhere.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 30 of 36

CO74-1
cont'd

In other words, coal is a global commodity, and if the coal does not come out of the ground in the North Fork consumers will simply pay to have the same amount of coal pulled out of the ground somewhere else—overall GHG emissions from combustion will be identical under either scenario. The agencies reached this conclusion in part by relying on a U.S. Department of Energy report forecasting a small annual increase in the demand for coal. CRR-0080586. Based on that assumption, the agency concluded that perfect substitution would occur.

I cannot make sense of this argument, and I am persuaded by an opinion from the Court of Appeals for the Eighth Circuit that rejected a nearly identical agency justification for not analyzing the future effects of coal combustion. In *Mid States Coalition for Progress v. Surface Transportation Board*, the court held that an agency violated NEPA when it failed to disclose and analyze the future coal combustion impacts associated with the agency's approval of a railroad line. 345 F.3d 520, 549 (8th Cir. 2003). In that case—like this one—the agency argued that emissions would occur regardless of whether the railroad line were approved because “the demand for coal will be unaffected by an increase in availability and a decrease in price.” *Id.* The court rejected this argument as “illogical at best” and noted that “increased availability of inexpensive coal will at the very least make coal a more attractive option to future entrants into the utilities market when compared with other potential fuel sources, such as nuclear power, solar power, or natural gas.” *Id.* The same dynamic is at play here. The production of coal in the North Fork exemption will increase the supply of cheap, low-sulfur coal. At some point this additional supply will impact the demand for coal relative to other fuel sources, and coal that otherwise would have been left in the ground will be burned. This reasonably foreseeable effect must be analyzed, even if the precise extent of the effect is less certain. *Id.* at 549-50.⁷

⁷ I am unpersuaded by the agencies' attempts to distinguish *Mid States*. The fact that *Mid States* was decided in the context of identified rail lines does not distinguish it from this case where the agencies had

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 31 of 36

CO74-1
cont'd

iii. The CRR FEIS Failed to Address Dr. Power's Expert Report.

Plaintiffs raise a third objection to the FEIS that is closely related to the issue of whether it was arbitrary to omit a discussion of the effects of coal combustion. The plaintiffs contend that the agencies failed to address, respond to, or acknowledge an expert report that they submitted on the topic of forecasting GHG emissions, thereby violating NEPA's instruction to respond to "any responsible opposing view which was not adequately discussed in the draft statement." 40 C.F.R. § 1502.9(b).

Dr. Thomas Michael Power's report, put simply, raises the same arguments discussed above about the ability to forecast emissions from coal combustion. His report indicates, contrary to the agencies' assumptions about perfect substitution, that consumers would be unable to perfectly substitute and that overall emissions would be higher if the CRR were approved. CRR-0137587 at 0137606-09.

The agencies argue that Dr. Power's report was categorized as Public Concern 2-195, CRR-0138670-73, and addressed in the CRR FEIS Response to Comments at CRR-0153244. It is true that the report and its criticisms are reprinted as Public Concern 2-195. The stickier issue is whether the agency adequately responded to the report. The response makes no mention of Dr. Power's report and, perhaps more importantly, it does not address the criticism that perfect

existing data from three identified mines and were able to provide a detailed forecast of the amount of coal that would come out of those mines pursuant to the CRR. I also see no significant difference between the definition of foreseeability in the Eighth and Tenth Circuit NEPA jurisprudence. *Compare Mid States*, 345 F.3d at 549 (reasonable foreseeability means that an event is "sufficiently likely to occur that a person of ordinary prudence would take it into account") with *Utahns for Better Transp.*, 305 F.3d at 1176 (reasonable foreseeability includes effects that "are sufficiently likely to occur"). The Tenth Circuit adds the caveat that "[e]ven as to impacts that are sufficiently likely to occur such that they are reasonably foreseeable and merit inclusion, the FEIS need only furnish such information as appears to be reasonably necessary under the circumstances for evaluation of the project." *Utahns for Better Transp.*, 305 F.3d at 1176. The caveat does not modify the definition of reasonable foreseeability, however. It merely adds a reasonable limitation on what foreseeable effects must be included in the FEIS by clarifying that only relevant and foreseeable effects must be included. Here, the agencies do not explain why the effect of coal combustion, if foreseeable, is nonetheless not relevant to an analysis of the project.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 32 of 36

CO74-1
cont'd

substitution is unlikely. The response merely noted that quantitative analysis of GHG emissions was too speculative at this programmatic stage and postponed more detailed analysis at the project level. CRR-0153244. The agencies do not argue that Dr. Power's report was not a "responsible opposing view." Moreover the substance of his report is not addressed by the portion of the record cited by the agencies. This failure to engage with Dr. Power's report violates 40 C.F.R. § 1502.9(b).

iv. Exploration Plan Environmental Assessment

Finally, plaintiffs allege two NEPA violations in the Exploration Plan Environmental Assessment ("EA"): (1) the agencies failed to take a hard look at the plan's effects on recreation interests, and (2) the agencies failed to consider two reasonable alternatives to the plan. Failure to adequately evaluate effects on recreational interests is grounds to overturn a NEPA document. *Nat'l Parks & Conservation Ass'n v. Fed. Aviation Admin.*, 998 F.2d 1523, 1533 (10th Cir. 1993).

The Lease Modification FEIS explicitly acknowledged that exploration and drilling could affect recreational activities but postponed such an analysis until those "activities are specifically proposed." BLM_EP-013386 at 013567-68; FSLicensing-0046776 at 0046957-58. Yet when the agencies had an opportunity to evaluate proposed on-the-ground activities, they determined that effects on recreation "will not be analyzed," BLM_EP-016168 at 016182-83, despite the fact that such values are present, *id.* at 016183. Confusingly, the EA explains that there are no recreational facilities in the exploration area. *Id.* Yet the same document reveals the presence of two trails—the Sunset Trail and Trail 8152—in the area. BLM_EP-016175. Proposed roads and drill pads will be located near these trails and in some instances will be placed on top of them. *Id.* (drill pad SST-1 is located on top of Trail 8152). Therefore the proffered reason for

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

CO74-1
cont'd

foregoing an analysis of recreational values is simply wrong. There are recreational facilities in the area. It seems all but certain that they will be affected by the proposed exploration activities.⁸

The fact that the EA was “tiered” to the recreational analysis in the Leasing Modification FEIS changes nothing. First, the FEIS explicitly postpones site-specific analysis until later proposals (see discussion in the preceding paragraph). Plaintiffs refer to this as a shell-game. While I am sure the agencies did not mean to deceive anyone, their logic is hard to follow. If site-specific analysis was to be postponed, then it should have been performed at a later opportunity. It makes no sense for the agency to then turn around and “tier” their analysis to an early analysis that never took place.

The agencies claim that the EA performed a de facto analysis of all of the same factors that would be considered in an analysis of recreational interests: effects on wildlife, vegetation, and scenic resources. BLM_EP-016188–97, BLM_EP-016201–02. Intervenor defendants further argue that these factors are the only way to measure the experience of a person engaging in dispersed recreational activities like off-trail hiking or hunting. [ECF No. 74 at 17.] That may be true, but the EA and Leasing Modification FEIS do not make this argument. Therefore it is impossible for this Court to know whether the agencies did in fact do this analysis. And as post hoc justifications for agency decisions, these explanations cannot support the agencies’ action. *Colo. Envtl. Coal. v. Salazar*, 875 F. Supp. 2d at 1249-50.

⁸ At oral argument, the defendants suggested that Trail 8152 is an unnamed user path that does not appear on some maps of the area and that plaintiffs are just now seizing upon its existence in a desperate move to try to find errors in the EA. The trail appears on the very same map that the agencies used in the EA, however. Rather than a late-breaking, insignificant flyspeck, this looks like a clearly marked trail (whether it gets much use, the Court cannot say) that the agencies themselves have been aware of since before they approved the Exploration Plan.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

CO74-1
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Furthermore it appears that the agencies dismissed at least one reasonable alternative proposed by plaintiffs without providing an explanation for the dismissal. “The existence of a viable but unexamined alternative renders an alternatives analysis, and the EA which relies upon it, inadequate.” *Diné Citizens Against Ruining Our Env’t*, 747 F. Supp. 2d at 1256; *Wilderness Soc’y v. Wisely*, 524 F. Supp. 2d 1285, 1310-12 (invalidating an EA for failing to explain why a no action alternative was dismissed). However, “NEPA does not require an agency to analyze the environmental consequences of alternatives it has in good faith rejected as too remote, speculative, or [] impractical or ineffective.” *Lee v. U.S. Air Force*, 354 F.3d 1229, 1238 (10th Cir. 2004) (internal citations and quotation marks omitted).

Plaintiffs suggested a modified plan that eliminated a section of road that appeared to be redundant. BLM_EP-000469 at 000477. The agencies claim to have considered the alternative but declined to offer a full analysis because the alternative was not viable. Federal Defendant [Response Br., ECF No. 72 at 43.] They further explain that the redundant road is critical to worker safety in the event of a disaster requiring multiple exit options. *Id.* This appears to be a perfectly valid reason. However this justification appears nowhere in the agencies’ documents until this litigation.⁹

Plaintiffs also claim their proposal to eliminate borehole SST-10 was ignored. The agencies, however, tangentially addressed this proposal in the EA when they explained why the proposal to limit the project to four holes was unacceptable. The EA notes that such a limitation “would not provide the necessary information on the coal.” BLM_EP-016180. This explanation, while it verges on non-responsive, nonetheless explains why this alternative was rejected as inconsistent with the purpose of the project. The Court finds that the agencies

⁹ It is not, as defendants claimed at oral argument, obvious from the face of the maps that the redundant road is necessary for safety purposes.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 35 of 36

CO74-1
cont'd

properly considered and explained their rejection of the proposed elimination of borehole SST-

10.

v. Remedies

Both defendants ask the Court not to address the remedy for any NEPA violations at this time but instead to receive additional briefing on that subject. Plaintiffs reply that they do not object to deferring remedy briefing until after the Court's ruling on the merits. No one has informed the Court as to what the mystery is about the remedy or what menu of options the Court might have. Under the Administrative Procedure Act the Court is directed to hold unlawful and to set aside agency action found to be arbitrary, capricious or otherwise not in according to law. 5 U.S.C. § 706(2)(A). Thus, "vacatur" of the non-compliant agency action appears to be mandatory.

I nevertheless acknowledge that the parties, who are intimately familiar with the case, might have suggestions that the Court has not considered. The Court directs counsel to confer and attempt in good faith to reach agreement as to remedies. If agreement is not reached, the parties may submit additional briefing concerning remedy no later than 30 days from today's date. This will consist of one brief for the plaintiffs collectively, one for the government defendants collectively, and one for the intervenors collectively. The three briefs may be no longer than 10 pages including everything from the caption to the certificate of service.

However, one aspect of the remedy is both clear and immediate and is imposed upon the issuance of this order. The intervenor defendants are immediately enjoined from proceeding with the Exploration Plan in any manner that involves any construction, bulldozing or other on-the-ground, above-ground or below-ground disturbing activity in the subject area.

COMPANIES AND ORGANIZATIONS

CO74 – Eathjustice (cont'd)

Case 1:13-cv-01723-RBJ Document 91 Filed 06/27/14 USDC Colorado Page 36 of 36

CO74-1
cont'd

IV. Conclusion

Plaintiff's petition for review of agency action is granted and sustained. As indicated immediately above, the intervenor defendants are immediately enjoined from proceeding with the Exploration Plan in any manner that involves any construction, bulldozing or other on-the-ground, above-ground or below-ground disturbing activity in the subject area. The government defendants' approval of the Exploration Plan is vacated. Plaintiffs' motion for the entry of a preliminary injunction [ECF No. 71] is moot. The Court will hold in abeyance any further remedial orders pending either notification that the parties have reached an agreement or the receipt and evaluation of supplemental briefs on remedy.

DATED this 27th day of June, 2014.

BY THE COURT:



R. Brooke Jackson
United States District Judge

COMPANIES AND ORGANIZATIONS

CO75 – HydroQuest



HydroQuest

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April 7, 2014

Kimberly D. Bose, Secretary
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US Army Corps of Engineers
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RE: HydroQuest Comments on Constitution Pipeline DEIS (Docket No. PF12-9)

Dear Ms. Bose,

CO75-1

Please accept technical comments provided here specific to the Constitution Pipeline DEIS which addresses the construction of a 124.44-mile natural gas pipeline that, as planned, would extend from Susquehanna County, PA to Schoharie County, New York. As written and portrayed in the DEIS with a preferred routing scenario, FERC has the power to grant eminent domain to Cabot via a certificate of public convenience and necessity if the project is approved. The DEIS fails to provide adequate rationale for public convenience and necessity for the project design route. This comment letter will address a few of many significant issues not adequately addressed in the DEIS as they relate to the proposed project design route.

Taking and Financial Responsibility

As currently designed, this project is not in the public interest because it will unnecessarily "take" private lands, will interfere with private use and enjoyment of property, will reduce property values, and will unnecessarily degrade and compromise environmental resources. Furthermore, any profits derived from construction of this pipeline and sale of natural gas transported through it will not benefit private landowners financially. This is not a profit-sharing venture designed to equally remunerate private landowners. Similarly, it is not public improvement. Instead, it is a project designed to bolster profits for two select gas exploitation companies: Williams and Cabot Oil & Gas. As a hydrogeologist, I have worked with law firms to assist property owners in reaching agreements to compensate them for adverse health impacts they have suffered and for replacement water supplies. One such case involves one of these corporations which has left massive quantities of buried contaminated waste situated hydrogeologically up-gradient of homeowner wells. A number of the involved chemicals are the

CO75-1

See the response to comment FA8-3 regarding eminent domain. See the response to comment LA7-5 regarding need and comment CO50-55 regarding benefit. See the response to comment LA4-2 regarding water well testing. See the response to comment IND285-2 regarding chemicals. See the response to comment CO45-1 regarding compensation due to an incident.

S-1009

COMPANIES AND ORGANIZATIONS

CO75 – HydroQuest (cont’d)

S-1010

CO75-1 cont'd	<p>same as those buried at the Love Canal hazardous waste site where families were evacuated. Yet, after years of litigation and abdication of responsibility, some of impacted homeowners still cannot drink their groundwater and are still involved in litigation. Others have been silenced with non-disclosure agreements. Should pipeline corrosion, rupture, and failure occur that results in property damage, explosions, injuries, and death – there needs to be a means by which injured parties are quickly compensated for their losses without undue and lengthy litigation at the expense of private property owners. Project approval should not be granted without extensive legal protections for private landowners being set forth first.</p>
CO75-2	<p>Alternate Pipeline Routing</p> <p>The DEIS provides what the applicant’s perceive as preferred pipeline routing options. Assuming that it is possible to make a case that gas pipeline construction is a needed public improvement required to transport natural gas as desired by Williams and Cabot, the DEIS lacks sufficient scientifically justifiable criteria upon which pipeline routing approval should be granted. Pipeline routing should be predicated on meeting legally and scientifically defensible goals that provide maximum possible environmental protection with minimal taking of private property. Such goals and criteria have not been reasonably provided and followed in the DEIS. As such, the DEIS should be rescinded and redrafted prior to again being distributed for public review and comment.</p> <p>Herewith, I provide what I see as an obtainable goal for the proposed Constitution Pipeline. The preferred target goal for an acceptable route for the Constitution Pipeline should be:</p> <p>GOAL: The goal for a preferred and acceptable Constitution Pipeline route selection should be to maximize use of all available preexisting easements (e.g., pipeline routes, transmission line corridors, roadway corridors) such that disturbance of private and natural lands is minimized, thus protecting the environment and reducing the taking of lands through eminent domain. The target siting criteria goal for the Constitution Pipeline project should be to utilize preexisting easements (90% percent), with an overall goal of limiting new land disturbance to less than ten (10) percent of the land along the pipeline route. This goal should be mandated as part of the approval process. Failure to achieve this goal should result in rejection of the project until it is redesigned to meet this goal.</p> <p>For this project, ten percent of the 124.44 mile proposed route would equate to a maximum acceptable land disturbance of 12.4 miles. Failure to meet this goal should result in project denial. This goal can be achieved, thereby minimizing unnecessary environmental degradation, minimizing disruption of hydrologic systems, and minimizing taking of private property.</p> <p>I have attached two letter reports authored by Stephen Gross and myself dated December 4 & 5, 2013. These reports discuss specifics of the proposed Constitution Pipeline (e.g., siting criteria, Environmental Conservation Law) that should be considered as comments that also apply to the DEIS as related to the transportation of natural gas in any form (i.e., gaseous and liquefied phases). They are hereby incorporated by reference to this submittal. GIS maps are provided as</p>

CO75-2 The commentor’ statements regarding collocation are noted. See the response to comment CO43-8 regarding collocation.

COMPANIES AND ORGANIZATIONS

CO75 – HydroQuest (cont'd)

S-1011

CO75-2
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part of these reports. Reference to the December 4, 2013 letter addresses New York State's declared policies that are consistent with the project goal offered above:

"... to conserve, improve and protect its natural resources and environment and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well being." (ECL Section 1-001) that encourage "... community development which provides the best usage of land areas, maximizes environmental benefits and minimizes the effects of less desirable environmental conditions ... and encourages alternatives which minimize adverse impacts." (ECL Section 3-0301).

Pipeline routing as portrayed in the DEIS fails to meet the intent of the Environmental Conservation Law and fails to adequately protect people, their property, and the environment. Thus, environmental thresholds of the ECL cannot be upheld. Therefore, the DEIS should be rescinded and redrafted with a pipeline route consistent with the ECL and goal provided above.

The goal of less than ten percent new land disturbance along a Constitution Pipeline route can be achieved, thereby minimizing the unnecessary taking of lands by eminent domain and unnecessary fragmentation of habitat. As planned, the Constitution Pipeline will needlessly disrupt and destroy over 100 miles of private lands. To approve the proposed "preferred" pipeline route would be in conflict with NYS Environmental Conservation Laws. Figure 4 presented and discussed in our letter of December 5, 2013 provides an excellent example of how pipeline routes should be designed to follow all available easements. Here, we provide a viable alternate pipeline route that, even without exacting review of all available easements, offers a pipeline route using about 89 percent of preexisting easements. This option should have been fully considered and, with little modification, put forth as the best, most environmentally and property owner friendly, option. The Constitution Pipeline route fails to reasonably consider private property and environmental concerns. Because the DEIS fails to adequately examine and promote a pipeline route that maximizes use of preexisting easements, it should be rescinded, pending complete project redesign – including consideration of the pipeline route portrayed in Figure 4 of the attached December 5, 2013 letter.

CO75-3

Preferential Permeability along Pipelines: Hydrogeologic-Groundwater Implications

The DEIS fails to provide adequate characterization of potential adverse hydrogeologic-groundwater resource impacts associated with pipeline construction. It should be rewritten with extensive analyses of potential, avoidable, and unavoidable hydrologic impacts along the entire proposed pipeline route. Herewith, a partial framework for this work is provided in the discussion below.

Trenches dug to contain pipelines disrupt and significantly increase the natural porosity and permeability of soil, sediment, and bedrock alongside pipelines. The high porosity and permeability of backfilled trench material will result in pipeline trenches functioning as zones of low hydraulic head, effectively acting as interceptor trenches that will preferentially shunt shallow groundwater flow into and then along them. Depending on the physical, topographic,

CO75-3

See the response to comment FA4-54 regarding trench breakers..

COMPANIES AND ORGANIZATIONS

CO75 – HydroQuest (cont’d)

S-1012

CO75-3 cont'd	<p>and hydrogeologic setting, trench construction may cause a number of unnatural changes which require detailed evaluation prior to public review and comment. These potential changes and related impacts include but are not limited to:</p> <ul style="list-style-type: none">• Increased recharge to underlying aquifers;• Decreased shallow groundwater flow downslope of pipelines placed at angles other than perpendicular to topographic contour lines. This may, for example, result in spring and water supply flow reductions;• Diversion of shallow groundwater flow into and along pipeline trenches which may redirect flow away from areas formerly receiving flow;• Reduction in watershed area when trenches divert shallow groundwater flow outside natural catchment boundaries (e.g., away from ponds and lakes with low surrounding topography);• Lowering of the water table in areas with seasonally or perennially high groundwater levels. This may lead to loss of vegetation and ecosystem damage;• Drainage of wetlands in certain physical settings (e.g., wetlands elevated on hill slopes);• Sediment influx into waterways, wetlands, ponds, lakes, and reservoirs from non-compacted clay and silt-rich trench backfill; and• Pipeline trenches as preferential contaminant transport pathways stemming from pollutant influx into trenches from beyond them or from contaminant loss resulting from pipeline rupture (e.g., black powder compounds, corrosion products, hydrocarbon condensate).
CO75-4	<p>Conclusion</p> <p>As written, the DEIS should be rescinded. Should it be determined that there is a public necessity to construct the proposed pipeline, its route should, to the maximum extent possible, follow preexisting easements such that NO unnecessary environmental land disturbance of private and public land occurs. Figure 4 (discussed above) documents an important alternate pipeline routing that was not adequately considered that, if followed and improved, would follow some ninety (90) percent of existing easement pathways. Contrary to what is stated in the DEIS, this route would provide “... a significant environmental advantage over the proposed route.” To not mandate that pipeline routing take full advantage of preexisting easements fails to act in the public interest and is in direct conflict with NYS Environmental Conservation Laws.</p>

CO75-4 The commentor’s figures were not located within the documents filed on e-Library.

COMPANIES AND ORGANIZATIONS

CO75 – HydroQuest (cont'd)

Sincerely yours,



Paul A. Rubin
Hydrogeologist
HydroQuest

S-1013

COMPANIES AND ORGANIZATIONS

CO76 – Nolan and Heller, LLP

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BEFORE THE UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Constitution Pipeline Company, LLC
Constitution Pipeline

Docket Nos.: CP13-499-000 and CP13-502-000

CO76-1

**MOTION FOR LATE INTERVENTION AND ADDITIONAL COMMENTS OF
STANTON FAMILY FARM, LLC AND KENNETH STANTON, III**

Pursuant to Commission Rules 385.214(b) and 157.10, Stanton Family Farm, LLC and Kenneth Stanton, III (the “Stantons”) move to intervene and file additional comments in the above captioned proceeding. The Stantons previously submitted comments on this matter by letters dated March 25, March 26, and April 12, 2014. Further, Mr. Stanton and other members of the Stanton Family spoke at the public hearing on the Draft Environmental Impact Statement (“DEIS”) held on March 31, 2014 in Richmondville, New York.

Stanton Family Farm, LLC owns and operates the Stanton Farm located at 3217 State Route 145, Schoharie, Schoharie, County, New York, 12157. Kenneth Stanton, III is a member of the Stanton Family Farm, LLC. Mr. Stanton and other members of the Stanton family reside at the farm property.

As previously pointed out by the Stantons, the proposed Constitution Gas Pipeline would cross a portion of the Stanton Farm property. The Stanton Farm property is located between milepost (MP) 115 and MP 116 of the pipeline route in the area in which the proposed route crosses State Route 145. As proposed the pipeline would traverse a portion of the Stanton Property on which Stanton Family Farms, LLC has planned for, and is currently undertaking the construction of a substantial and significant expansion to the Farm’s operation.

Specifically, Stanton Family Farm, LLC is constructing a new “Heifer Barn” and associated facilities in an area through which Constitution Pipeline Company, LLC has proposed

CO76-1

The commentator’s request for intervention is noted. Our assessment of a reroute designed to avoid the subject resources is contained within section 3.4.3 of the EIS.

S-1014

COMPANIES AND ORGANIZATIONS

CO76 – Nolan and Heller, LLP (cont'd)

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CO76-1
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locating the pipeline. The Heifer Barn is a substantial structure covering an area of approximately twelve thousand (12,000) square feet. Construction of the barn has been planned by Stantons for a considerable period of time. Land clearing for the Heifer Barn has been completed and construction has been commenced. Attached hereto as Exhibit "A" are the plans for the Heifer Barn as prepared by JESS Engineering, PLLC.

Further, as indicated in the plans prepared by JESS, Mr. Stanton is undertaking the construction of a "Retirement Home" on a portion of the farm property in close proximity to the proposed pipeline route. See, Exhibit "A" sheet 2 of 3. With respect to both the Heifer Barn and the Retirement Home, a water supply well has been installed. The well is in close proximity to the proposed pipeline route. Approvals have already been obtained from the County of Schoharie for a new septic system for the Retirement Home. The septic system is also located in an area proximate to the proposed pipeline route.

I. CONTACT INFORMATION

All pleadings, filings and correspondence in this proceeding should be served on the following: David A. Engel, Esq., Nolan & Heller, LLP, 39 North Pearl Street, 3rd Floor, Albany, New York, 12207.

II. MOTION TO INTERVENE AND COMMENTS

Stanton Family Farm, LLC and Kenneth Stanton, III seek to intervene for the purpose of seeking rerouting of the proposed Constitution Pipeline so that the pipeline will not be located on the Stanton property and thus will not interfere or adversely affect the Farms operation, including the completion of construction and use of the Heifer Barn, as well as the construction and use of the Stanton "Retirement Home."

COMPANIES AND ORGANIZATIONS

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Stanton Family Farm, LLC and Kenneth Stanton, III hold no position on the overall issue of the need for, or desirability of the proposed Constitution Pipeline. However, the pipeline can and should be rerouted to avoid or bypass the entirety of the Stanton property. By intervening in this proceeding, Stanton Family Farm, LLC and Kenneth Stanton, III will have access to all filings in this matter which will assist in providing more detailed comments and input on alternative routing in the vicinity of the Stanton Farm.

Based upon the information set forth in the Application documents and DEIS, it appears that the proposed Constitution Pipeline would have a significant impact on the Stanton Farm and Kenneth Stanton, III. Such impacts are completely avoidable by relocating the pipeline route to an area away from or removed from the Stanton Family Farm. Stanton Family Farm, LLC and the Stanton family are making a substantial investment and expending significant effort with respect to the construction of the farm's operations including the new Heifer Barn. The facility has been long planned and is integral to the future operations of the Farm. Attached hereto as Exhibit "B" is a copy of the loan commitment letter issued by Farm Credit East with respect to financing associated with the construction of the Heifer Barn. The Commission should respect the plans and the associated investment expended by the Stantons and reroute the line away from the Stanton property. Such a rerouting will be consistent with the Commission's Rules which mandate mitigation measures to reduce the potential for adverse impact to agricultural productivity. 18 CFR § 380.12(h) and (j).

The basis for this request for late intervention is that the issue of rerouting the proposed pipeline in the vicinity of the Stanton Farm remains unresolved, notwithstanding several months of input and discussion on the issue from both the Stanton family and the New York State Department of Agriculture and Markets. To date, the legitimate concerns raised with respect to

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CO76 – Nolan and Heller, LLP (cont'd)

20140804-5045 PERC PDF (Unofficial) 8/4/2014 10:52:50 AM

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the potential effect that pipeline construction and operation would have on the Stanton Farm have not caused either Constitution Pipeline Company, LLC to reroute the line nor resulted in FERC Staff proposing a specific alternative that will avoid the Farm. As indicated by the plans set forth in Exhibit "A" hereto, it appears that the proposed route would virtually abut the Stanton's Heifer Barn, the Retirement Home and virtually pass over the top of the Stanton's water supply well. The proximity of the route to the well is significant in that the DEIS specifically expresses concerns as to any private water supply wells located within 150 feet of the proposed pipeline (DEIS §4.3.15). Further the DEIS presents a preliminary list of private water supply wells located within 150 feet of the pipeline (DEIS Table 4.3.1-2). That list should be revised to include reference to the Stanton well. See, Exhibit "A".

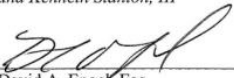
Relocating the proposed pipeline away from the Stanton Farm property is consistent with, and appears to be mandated by the Commission's Rules. See § 380.12(j) and § 380.15 (b) and (c).

WHEREFORE, for the reasons set forth herein, Stanton Family Farm, LLC and Kenneth Stanton, III request that the Commission grant this motion for late intervention and give due consideration to the comments presented herein.

Dated: August 4, 2014
Albany, New York

Respectfully submitted

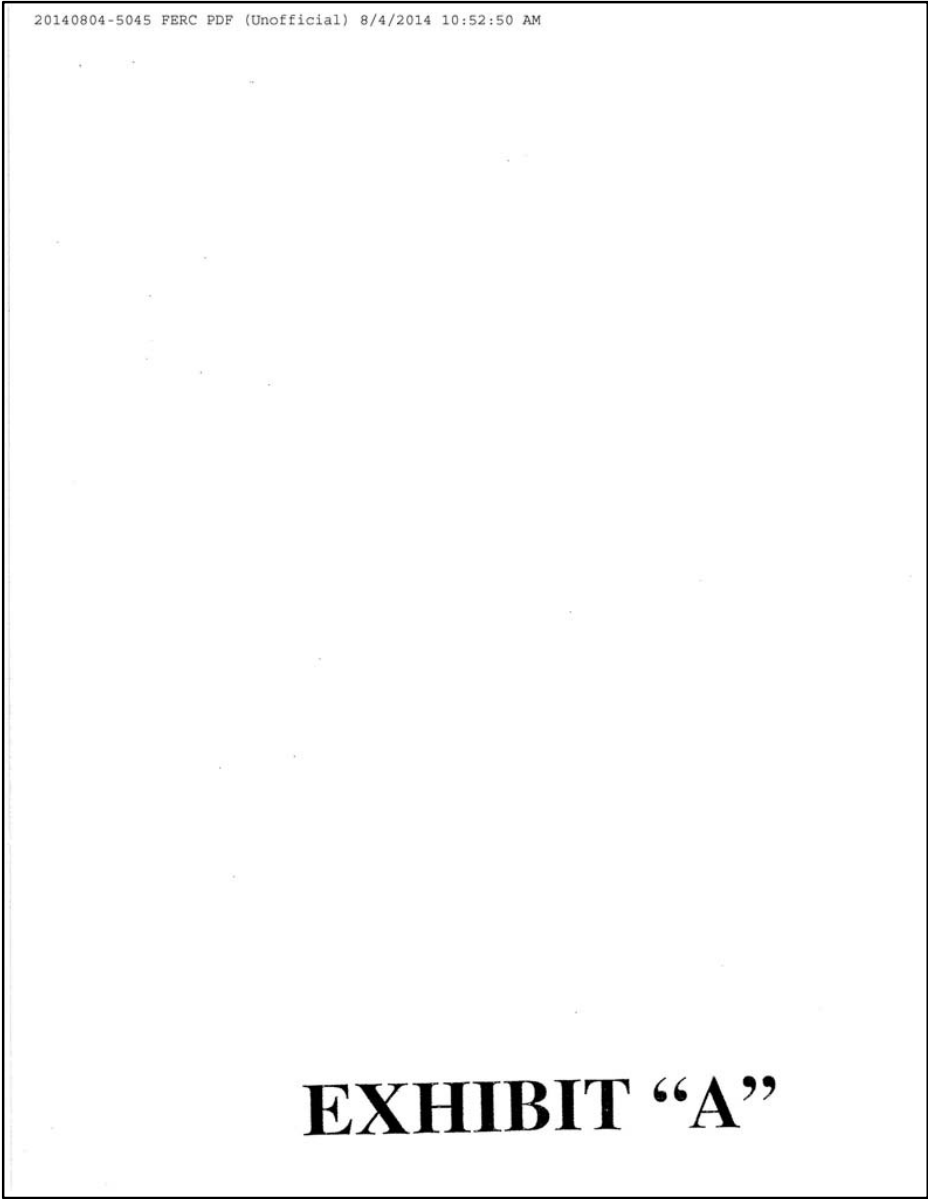
NOLAN & HELLER, LLP
*Attorneys for Stanton Family Farm, LLC
and Kenneth Stanton, III*


David A. Engel, Esq.
39 North Pearl Street, 3rd Floor
Albany, New York 12207
(518) 449-3300

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COMPANIES AND ORGANIZATIONS

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COMPANIES AND ORGANIZATIONS

CO76 – Nolan and Heller, LLP (cont'd)

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Designed By:
QESS
Engineering, PLLC
2121 County Rd. 10
Alpine, NY 14805

Designed For:
Stanton Family Farm, LLC
2275 Route 44
Schoharie, NY 12157

Stanton Family Farm, LLC
Dairy Expansion

Sheet Number	Sheet Title
1	Cover
2	General Farm View
3	Expansion Farm View

Attached:
Construction Specifications

DIG SAFELY
NEW YORK
1-800-962-7962
IT'S THE LAW!!
ONLY AT LEAST TWO WORKING DAYS
BEFORE YOU DIG.

Location Map
(not to scale)

It is a violation of the law for any person unless he is acting under the direction of a licensed professional architect/engineer to alter this drawing in any way. Alterations must have the seal affixed along with a description of the alteration, the signature and date.

Drawn By:
J. Skinner
Date:
05/14

Checked By:
J. Skinner
Date:
05/14

Drawing Number:
K-Civil-M31070000

Cover
Dairy Expansion
Stanton Family Farm, LLC

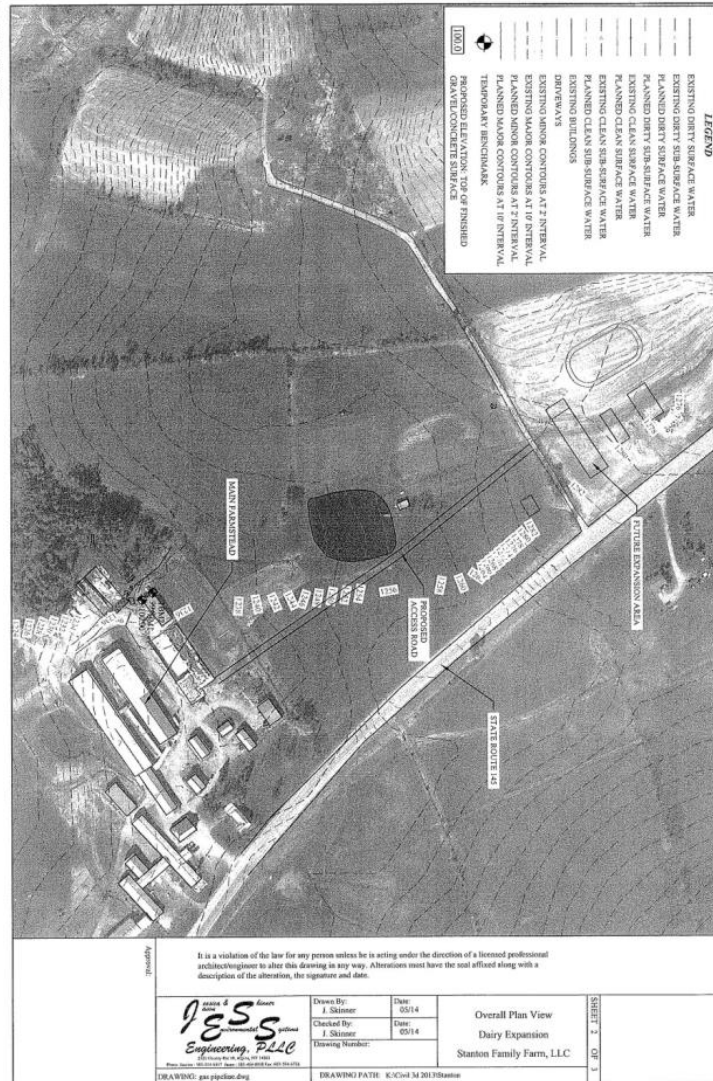
SHEET 1 OF 3

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Companies and Organizations Comments

CO76 – Nolan and Heller, LLP (cont'd)

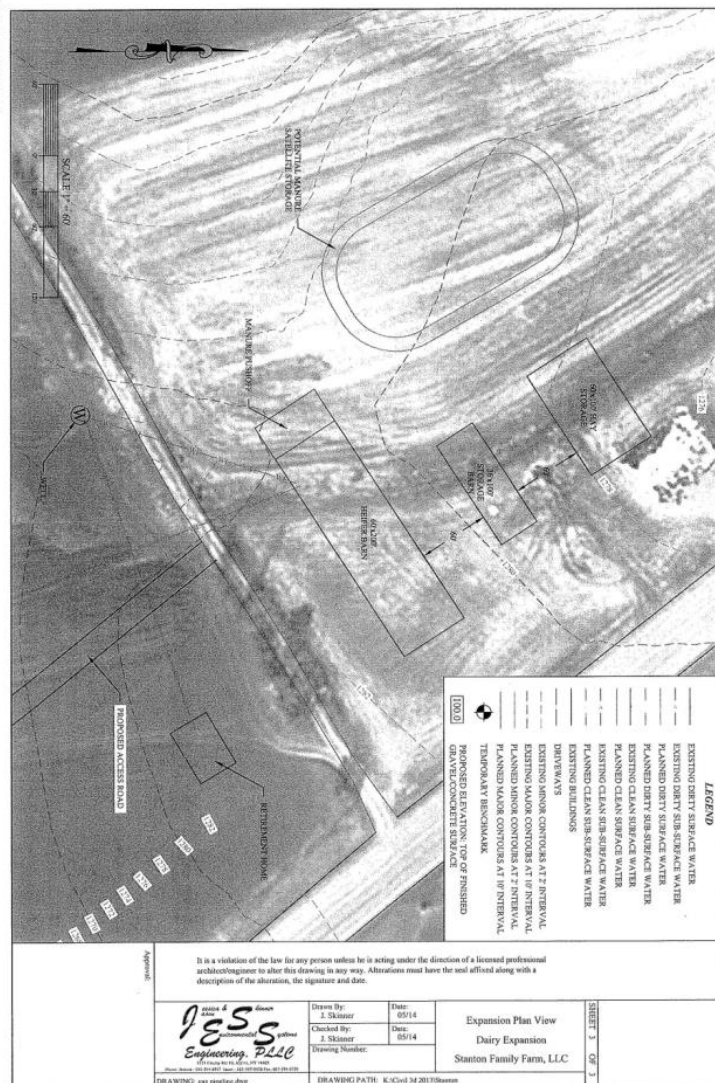
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CO76 – Nolan and Heller, LLP (cont'd)

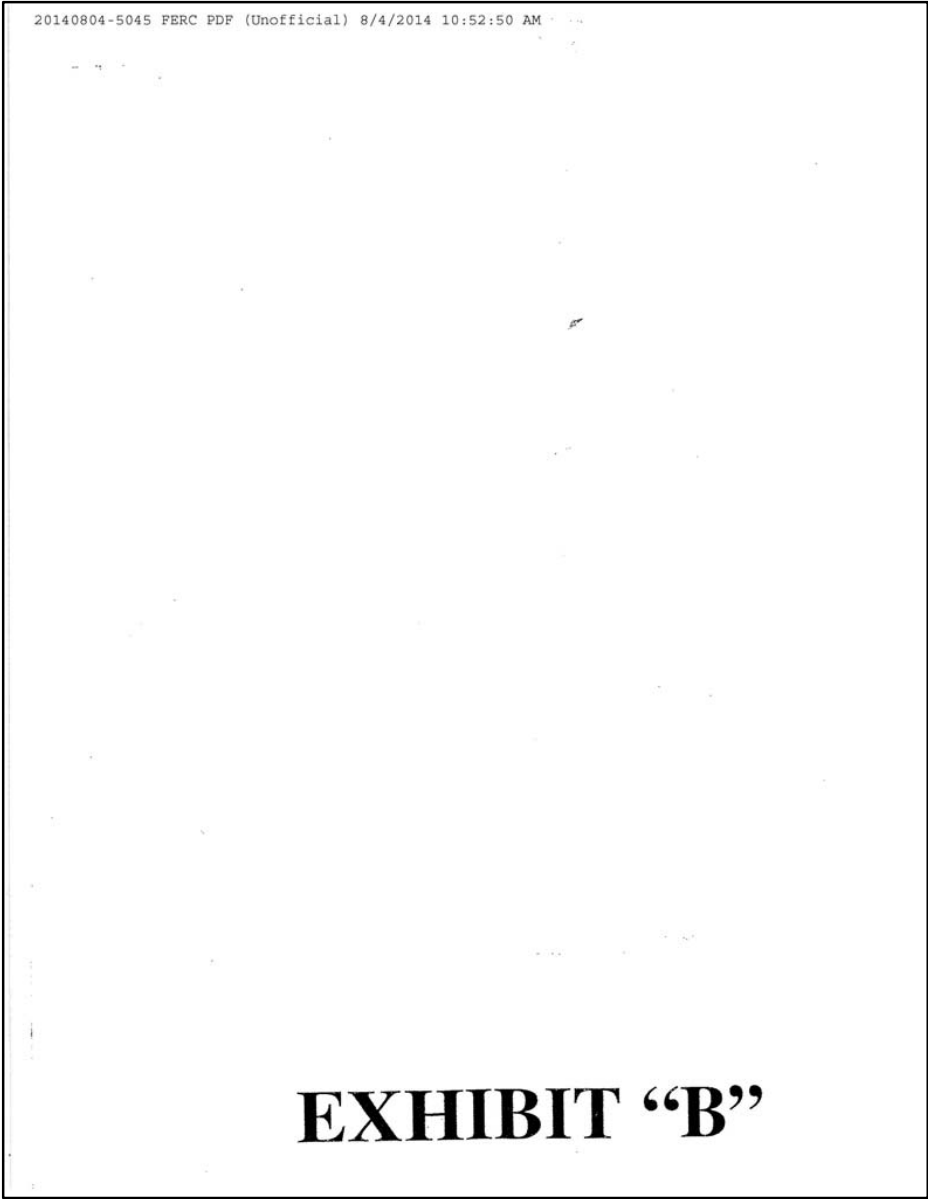
CO76 – Nolan and Heller, LLP (cont'd)

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COMPANIES AND ORGANIZATIONS

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COMPANIES AND ORGANIZATIONS

CO76 – Nolan and Heller, LLP (cont'd)

S-1023

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 **FARM CREDIT EAST, ACA**

2668 State Route 7, Suite 21, Cobleskill, NY 12043-9707
800.327.6588 • 518.296.8188
Fax 518.296.8187
FarmCreditEast.com

March 17, 2014

Stanton Family Farms, LLC
3271 State Route 145
Schoharie, NY 12157

RE: Borrowing Covenants and Approvals

Dear Ken:

I am writing to follow up on your inquiry for your annual loan renewal and the conditions under which we are able to approve your request. Farm Credit East, ACA has processed your requested and is renewing your loans based on the following:

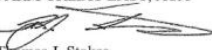
- Your farm is currently in compliance with DEC laws concerning the Medium CAFO status of your farm. This includes operating under an approved Nutrient Management Plan as prepared by Lisa Kuehnle at Schoharie County Soil and Water Conservation District with annual submission of your CAFO Appendix D showing compliance with your CAFO plan.
- A change in your CAFO and Nutrient Management Plan adds additional risk exposure to your farm concerning environmental laws, fines, and the ability of Farm Credit East to continuing lending to your business and could jeopardize future expansions on your farm.

This letter also acknowledges that your request for a \$100,000.00 loan to build a new 200 freestall heifer barn and 75 head calf barn is hereby approved based on the above mentioned CAFO conditions. Your CAFO and Nutrient Management Plan currently show the ability of the farm to remain environmentally compliant with these new facilities and allow your business to continue to grow at the Home Farm location.

Should you have any questions, please feel free to contact me by phone at (518) 296-8188 or by email at Thomas.Stokes@FarmCreditEast.com.

Sincerely,

FARM CREDIT EAST, ACA


Thomas J. Stokes
Loan Officer